

MEETING  
STATE OF CALIFORNIA  
THE RECLAMATION BOARD  
OPEN SESSION

RESOURCES BUILDING  
1416 NINTH STREET  
AUDITORIUM  
SACRAMENTO, CALIFORNIA

FRIDAY, JULY 20, 2007  
9:30 A.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President  
Mr. Butch Hodgkins, Vice President  
Ms. Lady Bug Doherty, Secretary  
Ms. Rose Marie Burroughs, Member  
Ms. Teri Rie, Member

STAFF

Mr. Jay Punia, General Manager  
Mr. Stephen Bradley, Chief Engineer  
Mr. Eric Butler, Senior Engineer  
Ms. Nancy Finch, Legal Counsel  
Mr. Dan Fua, Supervising Engineer  
Mr. Scott Morgan, Legal Counsel  
Ms. Lorraine Pendlebury, Staff Assistant

DEPARTMENT OF WATER RESOURCES

Mr. Lani Arena, Staff Counsel  
Ms. Annalena Bronson  
Mr. Robert Charney  
Mr. Mike Mirmazaheri, Manager, Delta Levee Program  
Mr. Keith Swanson, Acting Chief, Division of Flood Management

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Roger Churchwell, San Joaquin County Public Works

Mr. Gilber Cosio, MBK Engineers

Mr. Joe Countryman, MBK Engineers

Dr. Loretta Dean

Mr. Tom Eres, Hofman Ranch

Mr. Thomas Foley, Concerned Citizens for Responsible Growth

Ms. Patria Forster

Mr. George V. Hartmann, Reclamation District 2074

Mr. Les Heringer, M&T Ranch

Mr. Chris Neudeck, Kjeldsen, Sinnock & Neudeck

Mr. Dave Peterson, Peterson, Brustad & Pivetti

Mr. Thomas Rice, Rice River Ranch

Mr. Scott Shapiro, Downey Brand

Mr. Tim Washburn, Sacramento Area Flood Control Agency

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9. Applications - None

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## Approve Resolution 07-03

1. certify the Folsom Dam Safety and Flood Damage Reduction Final Environmental Impact Statement/Environmental Impact Report.
2. adopt Findings including a Statement of Overriding Considerations.
3. approve the Mitigation Monitoring Program

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1 PROCEEDINGS

2 PRESIDENT CARTER: Good morning, ladies and  
3 gentlemen.

4 Let the record show that we are beginning our  
5 State Reclamation Board meeting.

6 Mr. Punia, would you call the roll please.

7 GENERAL MANAGER PUNIA: Jay Punia.

8 Except Board Member Teri Rie, the rest of the  
9 Board members are present.

10 PRESIDENT CARTER: Excellent.

11 At this point we'll move on to -- the Board will  
12 enter into closed session to discuss litigation: Natural  
13 Resources Defense Council versus Reclamation Board; case  
14 No. 06CS01228, pursuant to Government Code 11126.

15 (Thereupon the Reclamation Board recessed  
16 into closed session.)

17 PRESIDENT CARTER: Good morning, ladies and  
18 gentlemen. Welcome to the State Reclamation Board  
19 meeting.

20 This morning let the record reflect that the  
21 Board did enter into closed session at 8:30 to discuss  
22 litigation as agendized for today.

23 That brings us to Item No. 3 on our agenda for  
24 today, Approval of the Minutes for April 20, 2007.

25 So we will entertain a motion to approve the

1 minutes for April.

2           SECRETARY DOHERTY: I'd like to make a motion  
3 that we approve the minutes of April 20th, 2007.

4           PRESIDENT CARTER: We have a motion.

5           Do we have a second?

6           VICE-PRESIDENT HODGKINS: Second.

7           PRESIDENT CARTER: Motion and a second.

8           Any discussion?

9           All those in favor indicate by saying aye.

10          (Ayes.)

11          PRESIDENT CARTER: And opposed?

12          Motion carries.

13          Now, on to approval of the agenda for today. I'm  
14 aware of one minor change to the agenda at this point,  
15 Item 12, the Proposed Reclamation Board Policy.

16          At this point, the Board's not prepared to take  
17 action on this, but we will have a discussion regarding  
18 this. So this will be an informational discussion. No  
19 action will be taken on Item 12. But we do invite  
20 everyone to stay and participate in that discussion.

21          Any other changes to the agenda as published?

22          Hearing none, then we'll entertain a motion to  
23 approve the agenda as amended.

24          SECRETARY DOHERTY: I'd like to approve the  
25 agenda as amended.

1 PRESIDENT CARTER: And a second?

2 BOARD MEMBER RIE: Second.

3 PRESIDENT CARTER: We have a motion and a second.

4 Any discussion?

5 All those in favor indicate by saying aye.

6 (Ayes.)

7 PRESIDENT CARTER: And opposed?

8 Motion carries.

9 All right. At this time, we are on Item 5. It's  
10 Public Comments. This is the time when the Board invites  
11 all members of the public to comment on items that are not  
12 agendized for today. We do ask that people when they  
13 address the Board try and limit their comments to five  
14 minutes. And we do ask you to fill out these cards for  
15 both public comment as well as if you do wish to address  
16 the Board on any agendized item. These are available on  
17 the table at the entrance to the auditorium and also from  
18 Lorraine here in the front. Please do fill them out. It  
19 helps us keep track of comments and helps me -- prompts me  
20 to be sure and recognize you when you do want to speak.  
21 So it helps with our process.

22 At this time, I do have a card for Ms. Dean.

23 Would you like to address the Board?

24 DR. DEAN: Yes please. I have a picture I'd like  
25 to have on the monitor.

1           Well, I've lived right next to the Sutter bypass  
2 all my life.

3           I live right here, right where the Sutter --  
4 Wadsworth Canal comes into the Sutter bypass. This house  
5 was built in the 1860s before the Sutter bypass was ever  
6 there. When it was built in 1917 they cut my  
7 grandfather's property into three pieces. There was a  
8 little piece over here, most of it's out here, and the  
9 bypass. It was all dry land. There was no irrigation.

10           And then after they built the bypass I used to  
11 drive the cows out across here. There was a slough that  
12 went across from this side to that side down the middle.  
13 That was the only water out there.

14           We dryland farmed beans, a pasture and a little  
15 grass, and we drove the cows out to the -- everyday and  
16 drove them back every night and we took them across that  
17 little slough.

18           Then in the 1940s the Sutter Refuge was -- bought  
19 up the property south of here. At the time they bought it  
20 that property was pasture ground for sheep. And when they  
21 bought it -- we used to run a piece of that property, a  
22 little 300 -- it's a 30-acre piece -- because we could run  
23 our fence to the bypass, we didn't have to fence the whole  
24 thing. But when they bought it, they built a mile-long  
25 fence along the east side so that they could have that

1 property. We tried to rent it from them, but they weren't  
2 interested in renting to us. And so we had to -- we sold  
3 it. We didn't want to have that kind of fence.

4           They said they would keep it up. But then in a  
5 few more years it would begin to fall apart and the cows  
6 are getting out. They came to us and told us that they  
7 didn't have any cattle; therefore, they thought we should  
8 keep up the fence. We were still trying to make them let  
9 us just build a three or four hundred yard fence and rip  
10 the property from them. They're not very apt to do that.  
11 So we had to maintain that big fence then, which was a  
12 metal fence -- or a metal post. And in that bypass they  
13 rust out in about five years, the fence rust right out  
14 there.

15           Anyway, once they took over they allowed the  
16 growth to grow in that floodplain until now there is a  
17 growth that comes from the east side almost halfway across  
18 that's a complete blockage of the canal. And I think I  
19 would like to show you another picture.

20           SECRETARY DOHERTY: So what you're saying, Dr.  
21 Dean, is that at one time the bypass was clear, there was  
22 no --

23           DR. DEAN: There was nothing out there except a  
24 couple of cottonwood trees. There was just a couple of  
25 cottonwood trees. There was a few rows along the edge

1 of -- that's how they made it. This is probably in the  
2 late thirties or early forties. I think that the Sutter  
3 Wildlife acquired that property in the forties. And they  
4 began to -- to begin with they had rice farming in there  
5 for the ducks and they would farm part it and then -- I'd  
6 like to show you a picture of the growth in that place.

7           Yeah, that's the one I would like.

8           This is the growth on the Sutter Wildlife Refuge.  
9 To begin with, it was just trees. Then the blackberry  
10 bushes grew in there. And then all kinds of weeds grew in  
11 there. Every time it had a flood, the flood stuff grows  
12 up and fills it up. It's impermeable. You can't get  
13 through there.

14           So when we had the flood in '97, the water came  
15 down, it hit this band, it flowed back and drove where you  
16 could see the break in the first picture, on the west side  
17 of the Sutter bypass. And I have someone that will tell  
18 you how much more water there is behind this band and on  
19 the other side.

20           Mr. Bair.

21           MR. BAIR: This is a graphic of the --

22           PRESIDENT CARTER: Could you introduce yourself,  
23 please, for the record.

24           MR. BAIR: My name is Lewis Bair and I'm a  
25 general manager for about 80 miles of levee maintaining

1 agencies in this region. Sac River Westside Levee  
2 District, RD 108 -- Ridgecut.

3           This is a survey that was put together by Sutter  
4 County around the time just before and after the 1997  
5 levee break that Dr. Dean just showed you. And what I'd  
6 like to show is really the comparison of the upper end of  
7 this graphic compared to the rest.

8           The top line you see here is the top of levee.  
9 The second line is the apparent water level surveyed  
10 post-levee failure and flood. And what you see is that  
11 this is -- it's a very flat channel, about a half foot per  
12 mile. Typically it's a bypass channel. And at the upper  
13 end of this, which is the beginning of the Sutter Wildlife  
14 Refuge in the area of vegetation that Ms. Dean talked  
15 about, there is about three foot of water surface  
16 elevation drop across that vegetation. And what that  
17 means is that it required a lot more energy from the water  
18 through that section, so the channel is plugged. What  
19 happens is it backs water up until there's enough energy  
20 to force it through that particular location.

21           So this has created, you know, about a three-foot  
22 higher water surface elevation where the break was.

23           SECRETARY DOHERTY: Dr. Dean, if this is a  
24 wildlife area, could you tell us where the best duck  
25 hunting is?

1 DR. DEAN: Well, I don't know where the best duck  
2 hunting is. It might have been duck hunting down there,  
3 but they don't have any feed for ducks. And they -- this  
4 ground that used to be in farming ground used to be  
5 planted to beans or safflower or one of those dry crops.  
6 They platted it out and they're putting duck clubs on that  
7 and they got ponds. They're planting trees out there on  
8 the edge of their ponds. They've got melilotus that's  
9 higher than my head out there, plus a couple of burs and  
10 other kinds of weeds.

11 SECRETARY DOHERTY: Wasn't it in your deeds that  
12 you couldn't plant things out there to impede the flow of  
13 water?

14 DR. DEAN: These that I saw that you couldn't put  
15 the fence on the upflow side of the posts because if it  
16 restricted the flow, they wanted it to -- if something  
17 flowed down there and got in your fence, they wanted it to  
18 break the fence and go away.

19 As far as I know there was not to be anything  
20 planted out there that was higher than just normal farming  
21 things.

22 SECRETARY DOHERTY: So is it your feeling that  
23 the growth in there now is endangering you?

24 DR. DEAN: I think it endangers the other side  
25 more than my side. And I know they're doing a lot of work

1 on my levee. And I don't think that the levee is that  
2 poor of shape. I think if they cleaned the bypass out, it  
3 would be a lot better. We'd have a lot less water up on  
4 the levee and therefore we wouldn't have to worry about  
5 fixing the levee. I don't think you can fix a levee that  
6 will hold the water, no matter how much fixing you do on  
7 it.

8 BOARD MEMBER BURROUGHS: Dr. Dean, you have  
9 showed us some pictures and described for us what the --  
10 you know, about the land. And it seems like you've said  
11 that there's a big difference in the vegetation  
12 management. Could you give us any other comments about  
13 what you think could change to improve?

14 DR. DEAN: Well, I think that it probably should  
15 be farmed rather than having this refuge. I don't know  
16 what kind of a refuge it is when you have it -- that has  
17 six foot of water on it. What kind of refuge is that? I  
18 mean what are they -- what are they going to have in that  
19 ground that can't come out on that levee and get out of  
20 there? I mean when it floods, the deer are on me. A lot  
21 of times the ducks are on me or the geese are on me. They  
22 don't really stay in there when it's flooded.

23 BOARD MEMBER BURROUGHS: So you haven't noticed  
24 any vegetative management that's been practiced?

25 DR. DEAN: Well, they have taken all the farming

1 out and they put in duck clubs is what I see them doing.

2 BOARD MEMBER BURROUGHS: Well, what is the most  
3 important function of the bypass?

4 DR. DEAN: Conveying water. And I think the  
5 think the growth in there is preventing it from moving  
6 water. I think this graph shows that it prevents it.

7 BOARD MEMBER BURROUGHS: Is this an area that  
8 could also be grazed?

9 DR. DEAN: I graze it, yes.

10 BOARD MEMBER BURROUGHS: Thank you.

11 PRESIDENT CARTER: Ms. Dean -- or, Dr. Dean, do  
12 you have anything else?

13 DR. DEAN: Well, I don't know what else you would  
14 like to have, but I think that's probably good enough for  
15 me.

16 PRESIDENT CARTER: All right. Thank you very  
17 much.

18 DR. DEAN: You're welcome.

19 PRESIDENT CARTER: Ms. Forster.

20 MS. FORSTER: Hello. I'm Patria Forster. And I  
21 would like to thank you for giving me the opportunity to  
22 be here today.

23 I live in the Sutter basin. And I live in  
24 Meridian, five miles south of town. And ten years ago, in  
25 1997, I became a victim of the 1997 flood. And I think we

1 see pictures of Katrina and the Carolinas and Florida of  
2 flood victims all the time, and nothing -- excuse me. I  
3 didn't think it would bother me ten years later. But  
4 nothing can prepare you for the devastation of walking  
5 into your home, which you think is going to be okay, and  
6 finding silt and mud and crawdads and frogs and fish dead  
7 all over the window sills and the floor and your carpet  
8 and your childhood memories and a great grandmother's  
9 piano, couches and furniture and beds and children's  
10 memorabilia.

11           The night that it happened I was home with my  
12 14-year-old son. And it flashed on the TV screen  
13 immediate evacuation. And you start to panic and then you  
14 look at each other and say, "What do we need to grab  
15 first?" We grabbed some childhood photos, the baby movies  
16 that couldn't be replaced, the dog, the two cats. And,  
17 thank God, I had a Suburban, because we had a 14-year-old  
18 goat that needed to go into the car too. We grabbed  
19 family pictures off the walls, things that were important  
20 because we knew that we would probably not be able to  
21 retrieve those things.

22           Baseball card collections were lost. Money  
23 collections were lost. Stamp collections that had been in  
24 the family for three generations were lost. A lot of --  
25 my husband is a seven generation Californian. He lost a

1 lot of family heirlooms that had been in his family from  
2 Pio Pico, who was our last Spanish Governor of California.  
3 It was his great, great grandfather. We lost a lot of  
4 photos from six generations.

5           It is devastating. But it's something you do  
6 survive from and you count your blessings everyday, the  
7 family members that you have, the Red Cross. But then you  
8 become frustrated after a year, after you've cleaned up  
9 and you've rebuilt and you've gone back. Material things  
10 don't matter as much as the frustration that you find with  
11 government policy. Trying to get a loan and repaying that  
12 loan that we will repay forever. Our house was owned.  
13 Everything that we had was owned. But now we will  
14 continue to repay.

15           The frustration of seeing the bypass overgrown.  
16 We've been in the area for 20 years. To see that bypass  
17 overgrown as much as it is today, more overgrown than it  
18 was 20 years ago is scary.

19           And Rose Marie Burroughs asked about the wildlife  
20 in that area. The wildlife does not thrive in that bypass  
21 right now. Where it thrives is in open areas where they  
22 can graze. I pulled into my driveway the other day and  
23 there was a mother fox with her kits playing on the lawn.  
24 It was about 9 o'clock at night. Every morning I run and  
25 I run on the levee. And the otters are swimming in the

1 canals. The raccoons, the possums, the deer are thriving  
2 in the farming areas. Yes, they do take refuge in the  
3 bypass, but not when it's a jungle. We have woodland  
4 creatures. We don't have sloths and monkeys and parrots.  
5 And that's what you would find in this overgrowth  
6 vegetation.

7           The berries, the grape vines, the entanglement  
8 that these animals would find themselves in is almost a  
9 detriment. And when this stuff dies, it blocks the  
10 impediment of water flow.

11           And my main concern here today is that -- we hear  
12 from our parents and our grandparents how to prevent  
13 things. Wear your coat on a rainy day. Take your cold  
14 medicine. And then there are some that say don't get  
15 close to a Black Widow Spider, they jump 30 feet; stay out  
16 of a pool 30 minutes after you swim. Well, we know those  
17 don't really work. But by cleaning out this bypass you  
18 are going to prevent another flood.

19           We did not sue in 1997. And people asked why.  
20 And I think that the community was in a state of shock.  
21 We wanted to get back into our homes. We wanted to get  
22 back into our farm ground. We wanted to make things  
23 better by just getting it back to where it was. And so we  
24 didn't sue. But now that we do know the problems that  
25 exist, and if it does happen again, I think there will be

1 some lawsuits. And so to use preventative medicine is I  
2 see as a solution. And I drove down through that Sutter  
3 bypass the other day. I am so surprised you can get a car  
4 through there anymore. It is extremely overgrown. And  
5 not overgrown from north to south but from east to west.  
6 Our water flows north to south. And you're going to have  
7 a big problem.

8           SECRETARY DOHERTY: Did you see any cranes in  
9 that area?

10           MS. FORSTER: South of us -- a mile south of us,  
11 they have been farming the area for over 30 years. They  
12 have a pond and it's a pond where water drains from  
13 fields. There are over 300 cranes and herrings that nest  
14 near that pond every single night. Their flyway is right  
15 over our house.

16           And about ducks, we had a mallard hen lay right  
17 behind the house. They used our pool as a nesting pond  
18 until the babies were old enough to fly.

19           So we do have wildlife out there. So the cranes  
20 and the herrings are -- they're using farm grounds.

21           BOARD MEMBER BURROUGHS: Question. If the bypass  
22 is cleared of all this overgrown berries and you said  
23 grape vines and even trees, do you -- there's controversy  
24 over trees and whether it's providing habitat for  
25 wildlife. What is your comment about the effect on the

1 wildlife if this area is cleared?

2 MS. FORSTER: I think there -- animals do need a  
3 habitat to live in. But when there's an overabundance of  
4 habitat, I think you have detriments. Animals will thrive  
5 where there are humans. And farmers in our area, we do  
6 leave our levees intact. When I say "our levees," our  
7 vegetation levees where there's farming in between --

8 SECRETARY DOHERTY: -- irrigation ditches.

9 MS. FORSTER: -- the irrigation system.

10 And you do have vegetation, you do have the  
11 cottonwood trees that grow along the irrigation canals.  
12 Some of it should be removed. Not all. And we're not --  
13 I don't think we're asking for all of it to be removed.  
14 But at least so that there's a free-flowing channel. And  
15 not just the Sutter bypass but also the Tisdale weir. The  
16 Tisdale weir is filled with trees and overgrowth, but not  
17 so much as the Sutter bypass. But when you actually go  
18 down and look at it, it will impede the waterflow.

19 But I don't think -- going back to your question,  
20 I don't think that it would be a detriment to the  
21 wildlife. I think it would benefit the wildlife. You see  
22 the deer in the open areas. You see the raccoons and the  
23 possums. Everything needs some place to stay. But most  
24 of the time their feeding habitat is in an open area. And  
25 I've been in a wildlife area my whole life and have

1 observed all kinds of wildlife.

2 PRESIDENT CARTER: Thank you very much.

3 MS. FORSTER: Thank you.

4 PRESIDENT CARTER: Mr. Heringer.

5 MR. HERINGER: Good morning. My name is Les  
6 Heringer. I manage the M&T Ranch, which is southwest of  
7 Chico, and have been there 21 years now. And we have  
8 about four and a half miles of Sacramento River frontage.  
9 And I put together a little pack of information for you  
10 that kind of follows along my presentation today. A  
11 couple weeks ago I sent down some additional information  
12 that I hope you have all had a chance to look at.

13 I'm here to ask for your help solving a bank  
14 erosion levee problem at River Mile 192 1/2. This last  
15 very dry winter we lost 75 feet of bank at River Mile 192  
16 1/2. And the levee there is called Phelan Levee. It  
17 was -- it actually protects the M&T weir site.

18 Now, the M&T weir site is the first weir on the  
19 Sacramento River. And it -- there's three of them that  
20 lead into the Butte Basin. It allows water to spill into  
21 the Butte Basin overflow area, which impacts four counties  
22 there. And it spills into Butte County and then flows  
23 into Glenn County. And then Colusa County is -- and then  
24 Sutter County are impacted at the south end.

25 And if I may -- let me see here. How do I --

1 there it is

2 (Thereupon an overhead presentation was  
3 Presented as follows.)

4 MR. HERINGER: Here's a picture of the levee.  
5 You can see where Big Chico Creek meets the Sacramento  
6 River at the north end of this picture. The outfall for  
7 the City of Chico and the M&T Llano Seco Pumping Plant is  
8 about the middle of the picture. And then the south end  
9 of the picture you can see a small gravel bar forming.  
10 And you can see where the erosion occurred last winter.  
11 And in the early eighties the Corps of Engineers protected  
12 the upper part of that levee with rock, because the river  
13 had taken out about half the levee and was trying to form  
14 a new -- form a new channel entrance into the Butte Basin  
15 overflow area. And they stopped the rock -- you can see  
16 where they stopped. There's a point right north of that  
17 gravel bar where the rock stopped. And it's been since  
18 the early eighties when they did that bank protection. So  
19 since they -- since the Corps of Engineers protected the  
20 upper part of that levee, the state took over maintenance  
21 responsibility for that levee. There really haven't been  
22 any maintenance problems with it. And since that time  
23 they've been watching the south part of that levee because  
24 it's been eroding a little bit every year.

25 --o0o--

1           MR. HERINGER: And in fact this work was done by  
2 the State Department of Water Resources.

3           You can see the lines that have been drawn there.  
4 They monitor the rate of erosion every year. And you can  
5 see in the apex of the curve it has been greatest several  
6 hundred feet there. But at the north end, which is close  
7 to the levee, it's been, you know, not near as much. But  
8 as I said, this last winter we did lose 75 feet there.  
9 And I don't know how many of you remember Don Meissner.  
10 He was head of the DWR Flood Management Section back in --  
11 I think in the late eighties and into the nineties. He  
12 has since retired. He put together all of the Butte Basin  
13 overflow area maintenance agreements and really watched  
14 this area because he knew it was vital to the flood  
15 protection system for the Sacramento Valley.

16           And then in '97 Ward Tabor was General Manager of  
17 the State Reclamation Board. He said that when the river  
18 reached within 150 to 200 feet of that levee that the  
19 state would take measures to protect that levee. And the  
20 river is now 120 feet from that levee after we lost 75  
21 feet this last winter. And two of your Reclamation Board  
22 members were up there last week and walked the site with  
23 several DWR and URS people. And we determined that we're  
24 probably about 40 feet from the working area above of the  
25 levee if we are to protect that levee.



1 leave at the M&T overflow area.

2 Now, this is a hardened weir. And the  
3 Reclamation Board mandated that the ranch degrade that  
4 levee in 1964. So there was a levee there at one time.  
5 The ranch has degraded their levees in 1964. And it's a  
6 hardened levee now. It has asphalt, it has concrete, and  
7 it has rock that protect that weir when the floods come.

8 --o0o--

9 MR. HERINGER: This is a picture showing the  
10 design flow. 150,000 cubic feet per second stays in the  
11 river and 150,000 cubic feet per second flow into the  
12 Butte Basin.

13 --o0o--

14 MR. HERINGER: This is a photo showing the three  
15 weir locations. You have the M&T weir and you have 3B's  
16 weir, and then you have Goose Lake's weir at the Llano  
17 Seco Ranch.

18 --o0o--

19 MR. HERINGER: This you can see the M&T weir,  
20 which is about an hour and a half downriver from where  
21 we're having the levee erosion problem. And it's about a  
22 half a mile long. And this was after the 1997 -- actually  
23 it was at the '98 flood. And you can see there's a lot of  
24 channelization that goes on after these big floods. The  
25 river is just out of the picture at the top. And what

1 you're seeing there is Murphy Slough and the M&T weir site  
2 right there. And it flows -- of course the water flows  
3 north and south over the M&T weir at flood stage. And we  
4 always get channelization that goes on in this location.

5 --o0o--

6 Here's after the 19 --

7 PRESIDENT CARTER: Mr. Heringer, we're kind of  
8 running on a time clock for public comment. This is  
9 probably information that's better for a formal  
10 informational briefing. Because we're getting to a level  
11 of detail that's kind of beyond --

12 MR. HERINGER: Okay.

13 SECRETARY DOHERTY: May I ask you a question  
14 though?

15 MR. HERINGER: Of course, yes.

16 SECRETARY DOHERTY: The Phelan levee the state  
17 took over to maintain; is that correct? Do I understand  
18 you correctly?

19 MR. HERINGER: The Phelan area is a private  
20 levee.

21 SECRETARY DOHERTY: Okay. So --

22 MR. HERINGER: The state did maintain it in 1983  
23 when the river -- at the point I showed you, when the  
24 river tried to go through it.

25 SECRETARY DOHERTY: When they did the rock Right

1 revetment?

2 MR. HERINGER: Yes, when they did the rock  
3 revetment.

4 SECRETARY DOHERTY: Okay. But with the insurance  
5 that they would if it came any closer take care of the  
6 rest of it?

7 MR. HERINGER: That's what they have said, yes.  
8 And it's all on record in your -- in the information I  
9 sent you a couple weeks ago.

10 PRESIDENT CARTER: So if you want to kind of wrap  
11 things up for us.

12 MR. HERINGER: Okay. Here I have a couple  
13 letters. It's from the Butte County Board of Supervisors  
14 requesting your assistance, the Glenn County Board of  
15 Supervisors requesting your assistance.

16 This is an issue that demands immediate  
17 attention. If the river gets through this levee, which is  
18 the direction it's headed in now, it will create another  
19 channel in the Butte Basin. You'll have an unregulated,  
20 uncontrolled weir allowing -- or overflow area allowing  
21 water to flow into the Butte Basin. This site is less  
22 than a half a mile east of Angel Slough. If that water  
23 hits Angel Slough, you'll have water running from the  
24 Sacramento River down to the Butte Basin for several  
25 months out of the year. I mean this is a disaster waiting

1 to happen and it demands immediate attention.

2           And DWR folks have been up there a couple times  
3 now and looked it over and are working on it, and said  
4 that they would give us an answer in September on whether  
5 or not they're going to repair it. And we think this  
6 needs to be declared a critical issue that demands  
7 attention this year.

8           So I am on your agenda for your August meeting.  
9 I appreciate your time here today. And I'm sorry that I  
10 ran over my time here. But this is an issue that we've  
11 been working on for many, many years. And, you know, we  
12 would certainly appreciate, you know, a positive,  
13 affirmative action from the State Reclamation Board to fix  
14 this problem this year.

15           Thank you.

16           PRESIDENT CARTER: Thank you.

17           BOARD MEMBER BURROUGHS: Thank you for providing  
18 all the information prior to the Board meeting.

19           MR. HERINGER: Thank you.

20           BOARD MEMBER RIE: Can I ask if DWR can fix it  
21 this year?

22           PRESIDENT CARTER: I think we can ask that maybe  
23 next month or as part of their briefing if you have  
24 something to add to the Phelan Levee --

25           SECRETARY DOHERTY: I wish we could take you up

1 there and show you, because it is shrinking.

2           PRESIDENT CARTER: Let's move on to Item 6 on our  
3 agenda today, Report of the Activities of the Department  
4 of Water Resources.

5           Mr. Swanson.

6           Good morning.

7           DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

8           SWANSON: Good morning. I'm Keith Swanson. I am  
9 once again Acting Chief of the Division of Flood  
10 Management. I had a five-month stint beginning in  
11 December. And this time it's a little bit different.

12           The Department is moving forward with a whole  
13 organizational change process right now to try to get the  
14 Department and stakeholders more actively engaged in our  
15 flood safe initiative. And our flood safe initiative is  
16 our traditional flood management activities, our  
17 operation, our maintenance, but more importantly all our  
18 bond initiatives.

19           We had, you know, a group working very hard to  
20 try to move the initiative forward. And the intent now is  
21 to really try to get the Department behind the initiative,  
22 the entire Department, get a stakeholder process that has  
23 input in how bond funds are spent, how programs are  
24 developed. And so it's an exciting time.

25           Included in this is an executive leadership team.

1 Dave Gutierrez, out of our Division of Dam Safety, has  
2 been asked to head this effort up.

3 Dave would have preferred to be here today. But  
4 he's down in Guadalajara, Mexico, for his brother's  
5 wedding, and so wasn't able to attend the meeting to talk  
6 with you. He's very anxious to meet with you and talk  
7 about the role of the Board as we move forward.

8 It's a monumental undertaking. And the analogy  
9 that we've been giving is that right now we're flying an  
10 airplane and we're headed off to a destination. We're now  
11 attempting to rebuild the engines of the airplane and get  
12 to the destination and get down safely. And so it's a  
13 pretty big change and we're excited about it. But, you  
14 know, we're moving forward as we speak. And so we're  
15 trying to get the process behind our decisions and get  
16 involvement. It's exciting but a lot of work ahead of us.

17 Moving on to, you know, more of the traditional  
18 report. You know, after the storms of 2005-2006, this  
19 past year from a water perspective has been extremely  
20 disappointing. I remember standing in front of you in  
21 December talking about weak El Niños and all these  
22 predictions of normal years or, you know, above normal  
23 years possibly down south. Well, of course we never saw  
24 that. Snow pack's completely gone right now and we're  
25 drawing down the reservoirs. And we're below average in

1 our storage because we are relying on the reservoirs to  
2 meet demand. You know, we hope for better conditions next  
3 year.

4           As far as Delta risk management strategy, that  
5 process is moving forward. There's a draft Phase 1 report  
6 that was completed in June, and it's under review by an  
7 independent review panel. It's going to be opened for  
8 public comment soon. I don't know if it is quite yet, but  
9 it's going to happen soon. And we're moving forward with  
10 mitigation strategies of the risks that were identified.  
11 That also will go through an independent review and then  
12 we'll be open to the public and be moved out to -- well,  
13 be used to formulate a vision for the Delta that would be  
14 put together by a blue ribbon task force. But the target  
15 for that is January 2008 for the vision.

16           Our erosion repair program continues to move  
17 forward. The 2005 Ayres sites are pretty well winding up.  
18 Mitigation planting is occurring on the last sites.

19           2006 sites, all but the Cache Creek sites are  
20 expected to be complete this construction season. The  
21 Cache Creek sites, that's an area very, very difficult  
22 problems, because you have the Cache Creek channel that is  
23 degrading. You have a geomorphic instability problem.  
24 And now you have a much deeper channel, vertical site  
25 banks. And the preferred alternative is working to

1 construct setback levees. Any time you construct setback  
2 levees, then you have impacts on private property owners,  
3 which are extremely difficult to work through.

4           It does appear that the process is moving  
5 forward. Property owners are allowing the Department on  
6 to their land so that appraisals can be developed. The  
7 Department has been working with the City of Woodland to  
8 identify borrow sources and areas to store material, you  
9 know, assuming the construction moves forward.

10           At this point in time it's not clear whether any  
11 kind of solution will occur this year or not, because  
12 there are still outstanding issues that need to be worked  
13 through.

14           There are a number of -- well, and then there's  
15 PL 84-99. The Order 1 and the Order 2 sites, work is  
16 completed on all 47. We'll be completed on all 47 by this  
17 construction season.

18           The Corps of Engineers is moving forward on  
19 orders 3, 4 and 5, more rural sites, smaller sites. And  
20 they're moving forward now. They're engaging the Resource  
21 agencies. And the thinking is that construction will be  
22 happening on those this year.

23           There's a number of special projects that the  
24 Department is looking at. Hamilton City interim repairs.  
25 There's three sites identified. The Department is looking

1 at those three sites. It's my understanding that the  
2 Department is likely to move forward with one of the three  
3 only. I don't know that that's been completely  
4 established yet. I'm still peddling quickly to get up to  
5 speed, having just taken this new assignment the last  
6 couple -- last week. So I'm not completely on top of  
7 that, but it's my impression.

8 M&T, you heard Les Heringer talk about that. He  
9 has a very clear vision where he would like to see the  
10 state go. Maybe you guys do also. I would say that as  
11 you start backing away, there are a lot of conflicting  
12 visions on what should be happening up in that area.  
13 There are a lot of issues. Les talked about the gravel  
14 bar that he has. And I know he's been dealing with that  
15 and looking for some kind of a state or a federal  
16 involvement to remove the gravel bar that's encroaching on  
17 his fish screen facility that was moved from Big Chico  
18 area around to that area.

19 I know that the river is trying to move away from  
20 his pumps and move to the west. And so they're expecting  
21 that there needs to be revetment over on the property over  
22 there, which I think, and I could be wrong, is federal  
23 property.

24 There are issues with I think the 3B overflow  
25 structure, that every time water flows over the top of it,

1 it's degrading, and the local interests think that there  
2 ought to be some kind of state involvement to harden up  
3 that levee.

4           There is the Phelan Levee, which is a private  
5 levee that erosion is moving toward, and that's what Les  
6 was talking about. You know, Les would advocate that  
7 there should be a waterside repair for that.

8           If you kind of take another perspective and you  
9 talk with the Department of Fish and Game, they would say  
10 that that's critical habitat for bank swallows. And they  
11 would say that if you're going to do something, you ought  
12 to be constructing a setback levee further.

13           If you talk to the Corps of Engineers, the Corps  
14 of Engineers would say, "There is no federal interest  
15 here, and so we don't want any involvement."

16           The Department has looked at it and is currently  
17 going through a technical evaluation. I'm not prepared to  
18 say what the results are now. The one thing that I look  
19 at and see is that the erosion toward the levee appears to  
20 be less significant. It's certainly moving out there and  
21 you certainly see erosion moving to the south toward the  
22 M&T overflow structure.

23           It's my understanding that there is a hardpan  
24 layer out there. How that hardpan layer will behave long  
25 term, you know, I think we have technical folks looking

1 at. It's an issue that we've got to come to grips with.  
2 And really we need to come to grips with how we manage  
3 that overall -- that whole overall area, because it's not  
4 just a problem. There are multiple problems out there,  
5 there are multiple perspectives out there. And whatever  
6 course we choose to move forward on is going to take  
7 coordination with all the various parties, because, you  
8 know, the interests are very, very divided out there.

9 BOARD MEMBER BURROUGHS: I have question.

10 I have a very nice article from Mary Pearson  
11 dated July 1st. And thank you for this article. And the  
12 title is "Levees are for flood control, not for River  
13 Forest Habitat."

14 And while we all -- I would like to say we all  
15 care about habitat, the levees are primarily for flood  
16 safety. So when we have comments -- public comments  
17 coming before the Board and bringing to our attention that  
18 state-owned property or managed -- being managed by the  
19 state is not -- the state is not doing their due diligence  
20 of managing property that's in the floodway by letting  
21 vegetation grow and restricting water flow, I think that  
22 we need to all come together. I like your comment about  
23 the organizational restructuring to be able to accommodate  
24 all the work that needs to be done. But I think we have  
25 to all be on the same page, that levees are, number 1, for

1 flood protection. And I think next month when we discuss  
2 this, we need to really understand why the state is not  
3 maintaining floodway property that's restricting the water  
4 flow.

5           You mentioned there's several problems with  
6 erosion. I'm not sure -- this is probably not the time to  
7 discuss it. But, you know, what is the cause of the  
8 erosion? And we know that mother nature is very powerful,  
9 as we've heard in many presentations and as we have  
10 experienced not only here in California but other states  
11 as well.

12           So it seems to me that -- I would hope that we  
13 would be able to address these issues. I realize they're  
14 complex, some things are very complex. But in the area of  
15 vegetation and restriction of water flow, I think that  
16 needs to be number 1. I look forward to talking to you  
17 about that next month.

18           Thank you.

19           DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

20           SWANSON: Okay. Thank you.

21           And, yeah, you know, I am in the flood control  
22 business. We actively maintain. But I am also obligated  
23 to comply with federal environmental laws. You know, I  
24 have -- I have, you know, legal mandates on a number of  
25 different fronts, and sometimes they're conflicting

1 mandates. And so any help I can get figuring out what the  
2 path is to move forward, I'm very anxious to have that  
3 help, because there does need to be a frank discussion on  
4 how we deal with what society has created is conflicting  
5 messages. And it is not easy and it's not difficult and  
6 it a tied up in law. And so, you know, we need to have  
7 that discussion publicly and we need to figure out  
8 collectively how we manage our river systems for public  
9 safety. But we cannot say that, you know, it's at the  
10 expense of the environment. I mean there's some kind of  
11 synergy there that we have to figure out where it is.

12 BOARD MEMBER BURROUGHS: And that comes down for  
13 me is just common sense.

14 But how would you propose that we start to  
15 address this issue? You mentioned we should have a  
16 discussion. How would you propose that?

17 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

18 SWANSON: Well, I think it's going to have to  
19 be -- at the local level there has to be discussion going  
20 on. And we've got to develop that partnership with the  
21 folks. And, you know, it's -- I'm not sure that here in  
22 Sacramento that we can dictate how that has to occur.

23 These guys know who their neighbors are. And so  
24 there's got to be that discussion going on. And we  
25 would -- we got to insist that they work together and

1 push. And there are some forums out there.

2           You know, I mean I'm not going to sit in front of  
3 you and say I have all the answers. And we've got to let  
4 them tell us what the answers are. But we cannot let them  
5 say that the only answer is, I mean, at the expense of  
6 somebody else who says, you know, the only answer is.  
7 We've got to push for the locals that live in the area to  
8 come up with, you know -- and then it's -- there's a  
9 higher framework.

10           Ultimately might there be some kind of political  
11 solution to some of these things? Maybe. But we've got  
12 to have the discussion and we've got to agree where we  
13 disagree. And anything that we agree upon, we've got to  
14 try to push forward and enact, you know.

15           And we had some discussions, you know, on the  
16 Sutter bypass. And I wasn't going to go into great detail  
17 on that. But, you know, we talked about some of the  
18 negatives there. But, you know, that's not the first time  
19 you've heard about the Sutter bypass, and we've been out  
20 there. And it's --

21           SECRETARY DOHERTY: You'll hear some more.

22           DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

23           SWANSON: Yeah. And we've made some progress out  
24 there. And so we're not where we want to be, but we're  
25 moving in the right direction, I think.

1           BOARD MEMBER BURROUGHS: I like what you said,  
2 "we." And earlier you made a comment about "them" and  
3 "local". And I'd like to just point out that --

4           DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

5           SWANSON: It's "we" --

6           BOARD MEMBER BURROUGHS: -- numerous times we've  
7 received packets as large as this one that shows a long  
8 history over many periods of years where communication has  
9 come from the local level.

10          DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

11          SWANSON: Yes.

12          BOARD MEMBER BURROUGHS: And this is evident  
13 right here with this report that we've just received. I  
14 don't know if you have a copy of this, but we'd like to  
15 provide you one if you haven't. But it's very well  
16 documented that discussion has tried to take place at a  
17 local level.

18                 So I guess I'm asking you again to think about  
19 it, and let's find the common ground of how we come  
20 together and we use the word "we" to find solutions rather  
21 than "them" or --

22          DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

23          SWANSON: Exactly. And the --

24          PRESIDENT CARTER: Ladies and gentlemen, I'd like  
25 to bring us back on task here. This is -- again, we're

1 kind of getting off track. We're entering into a  
2 discussion that we ought to agendize for a future meeting.

3 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

4 SWANSON: Thank you.

5 BOARD MEMBER BURROUGHS: And that's exactly what  
6 I was asking for.

7 PRESIDENT CARTER: So we will try and have this  
8 discussion as part of when we talk about the field and --  
9 we can talk about some of these issues and other issues  
10 and other agendized items that come up. But let's move on  
11 and have a report on DWR activities.

12 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

13 SWANSON: The 1997 Cost-Shared PL 84-99 Levee  
14 Rehabilitation Program was initiated in December of  
15 2000 -- or 1997. It was legislation that Vic Fazio  
16 carried. And it was the first time really that we ever  
17 saw the federal government acknowledging damage from  
18 continued seepage during high water events. And this  
19 program provided somewhere on the order of \$25 million to  
20 address this seepage-related damage. And money was  
21 utilized in Sutter, Yuba, Sacramento, and San Joaquin  
22 counties.

23 The program is almost complete. Loretta Dean was  
24 here earlier and she lives right at the confluence of the  
25 Wadsworth Canal and the Sutter bypass. Her property, she

1 mentioned, you know, family property, was cut by the  
2 federal project. And she was left in a situation where  
3 when the water comes up, she gets a tremendous amount of  
4 seepage in that area. And it's an area that my folks at  
5 the Sutter yard are concerned about because of the amount  
6 of underseepage that occurs there. And we identified it  
7 as a problem site when this cost-share program was  
8 initiated.

9           Initially the Corps's response was that they were  
10 going to construct a seepage berm. And there was  
11 discussion with various parties, technical folks, Loretta  
12 Dean herself. And it was decided that that was not a very  
13 good fix for the area because the seepage was deep and was  
14 going well out into, you know, where her house, her barn,  
15 her corral was, and that this, you know, wasn't really  
16 going to handle the problem.

17           SECRETARY DOHERTY: Keith, may I ask you a  
18 question about that?

19           DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

20           SWANSON: Yes.

21           SECRETARY DOHERTY: Was there not originally a  
22 drainage ditch that went down along the Wadsworth Canal  
23 that --

24           DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

25           SWANSON: That's my understanding, that at one

1 time there was a ditch.

2 SECRETARY DOHERTY: And it functioned well and  
3 then they filled it in. Why?

4 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

5 SWANSON: Well, I think when the Corps raised the  
6 levees, they filled it in. There is a very pervious  
7 strata out there and there's a little bit of hardpan layer  
8 periodically out there. But there are major underseepage  
9 concerns. And so my sense would be -- and this occurred  
10 back in the forties, I think, maybe the fifties -- that  
11 they were concerned about a shortened seepage path with  
12 that ditch when they raised the water surface. They  
13 raised the levees, raised the water surface in the bypass.  
14 And so there was concern about that and they eliminated  
15 the ditch. Well by eliminating the ditch, now all that  
16 seepage comes up and just ponds and floods the whole area.

17 And so what the Corps came up with to address  
18 this is to put in a slurry wall, curtain it through the  
19 levee to cut it off. And that is the Cadillac of fixes  
20 that we have. And --

21 SECRETARY DOHERTY: But how do you know how deep  
22 on that would go?

23 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

24 SWANSON: There were geotechnical explorations  
25 that were conducted through the area.

1           SECRETARY DOHERTY: Dr. Dean, did you want to  
2 respond?

3           DR. DEAN: Yes, I would like to address this  
4 problem.

5           PRESIDENT CARTER: Would you pass her microphone.

6           DR. DEAN: I've lived there before the seepage  
7 ditches were taken out. What they did was they -- is this  
8 all right? Is this good enough?

9           PRESIDENT CARTER: Yeah, that's fine.

10          DR. DEAN: Okay. What they did was -- they  
11 rebuilt the levee -- was they dug out those logs in the  
12 area alongside of the levee, put it up on top of the  
13 levee, then they closed that ditch off. Then they used  
14 the areas that they had dug out as the drainage areas.  
15 And to connect the drainage areas, because my house is on  
16 land between these drainage areas, they put a ditch behind  
17 us. That's why the seepage goes through me. It's because  
18 they put that drainage ditch behind the house. So all the  
19 seepage has to go out there.

20          Now, they have dug -- in the top of this levee  
21 they've dug -- three times they've dug -- drilled holes to  
22 see what's in that levee. One time they drilled alongside  
23 to see what's in the side of the levee. Now they've come  
24 back and they put some sort of a rod down there to test  
25 what's in the levee.

1           I think they've done enough surveying of what's  
2 in that levee for them to build a ditch alongside of it  
3 and take a seepage away. That's all.

4           Thank you very much.

5           SECRETARY DOHERTY: Thank you, Dr. Dean.

6           PRESIDENT CARTER: Thank you.

7           DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

8           SWANSON: We have our -- you know, Corps has had  
9 their technical folks come up with a design they think  
10 will address the seepage issue. Right now we're working  
11 through the documentation that we need for our PCA --  
12 update our PCA, reflect the increased costs. We'll be in  
13 front of you probably next Board meeting to ask for your  
14 approval of that document so that we can move forward with  
15 what we feel is the best technical solution to the  
16 underseepage problem in the area. If you guys approve it  
17 and we move forward, we would expect to go to construction  
18 next construction season, summer of 2008. And we feel  
19 that we will be taking care of a seepage problem that is a  
20 public safety issue.

21           So we'll be moving forward with that and we'll be  
22 back in front of you.

23           Garmire Road Bridge -- a couple bridge projects  
24 update.

25           Garmire Road Bridge continues to move forward to

1 secure its federal funding. It's my understanding we're  
2 still on track for May 2008 construction. That will deal  
3 with the blockage that we had entering into the Tisdale  
4 bypass.

5           The O'Banion Road Bridge was a bridge that the  
6 state built as part of the overall project on the Sutter  
7 basin. We have currently -- we have maintenance  
8 responsibilities for these bridges. We've entered into a  
9 contract with Sutter County. Upon completion of  
10 construction, which we pay the non-federal share of the  
11 cost for replacement, Sutter County will take over the  
12 operation and maintenance in perpetuity. That -- we're  
13 just finishing up the final payment -- paperwork to  
14 complete the final payment on that.

15           Tisdale bypass sediment removal, happy to say, is  
16 on schedule. Scrapers should be rolling in a couple of  
17 weeks. We had our Sutter yard folks complete a drainage  
18 ditch relocation that was necessary. That was the  
19 condition of our environmental permits. That work was  
20 completed on schedule. And so there really is no reason  
21 that we shouldn't be out to construction. That's kind of  
22 a last little hurdle.

23           We're going to have a final 2006 inspection  
24 report, but published next week and out to you guys. The  
25 inspection report results previously passed on to the

1 Corps of Engineers and the local reclamation districts, so  
2 there's just the final report.

3           The spring 2007 inspections have been completed.  
4 And the results has been sent out to the local maintenance  
5 agencies and the Corps. These reports, we didn't really  
6 rate anybody. We just tried to identify work that needed  
7 to be done.

8           Of course the outstanding issue has to do with  
9 the Corps's emerging policy on vegetation on the levees.  
10 In the event that they hold fast with where they started  
11 to go, we would have a major conflict. We're working with  
12 the Corps to try to resolve the issue based on scientific  
13 reasons. We are extremely concerned that if we get into  
14 this fight, that it will divert a lot of resources, money,  
15 people, away from more effective utilization of our  
16 limited amounts of bond funds. We think that dealing with  
17 deep underseepage, dealing with erosion, dealing with  
18 structures that need to be rebuilt, those things are a lot  
19 better utilization than chasing tree roots through levees,  
20 mining tree roots out, and getting into massive, you know,  
21 mitigation obligations because we removed what is deemed  
22 to be critical habitat.

23           So we're moving forward with that.

24           SECRETARY DOHERTY: May I ask you another  
25 question.

1 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

2 SWANSON: Sure.

3 SECRETARY DOHERTY: On your report it says,  
4 "Challenging problems regarding permitting and maintenance  
5 of encroachments, easements, grandfathering, and other  
6 issues must be addressed and cooperatively resolved by all  
7 parties."

8 When is this going to be decided? When can we  
9 expect an answer on this information?

10 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

11 SWANSON: I don't know that I could put a  
12 timeframe on the Corps's process.

13 SECRETARY DOHERTY: Well, wouldn't it have to  
14 kind of get done so that when you do the inspections in  
15 the fall and those reports are sent out, people will know  
16 whether or not --

17 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

18 SWANSON: The Corps has said at least on the  
19 vegetation issue that they are going to consider testimony  
20 and presentations that are going to be made in a symposium  
21 that's going to occur in late August. This is a -- you  
22 know, this symposium where we're trying to bring some of  
23 the science in on it.

24 You know, they're currently -- I think the latest  
25 I heard -- and I could be wrong on this -- but it was the

1 first of the calendar year. You know, it's kind of a  
2 moving target.

3           Now, some of these things we know we need to do a  
4 better job. We know we need to do a better job of levee  
5 maintenance. And so -- you know, you've heard in the past  
6 how we've been working with LMAs, who are an inspection  
7 group, to put people on notice that they need to deal with  
8 some of their more egregious issues. You know, there's  
9 been a lot of years where we've been in a state of denial  
10 on how we've maintained our levees. One of the biggest  
11 areas of concern will be this issue of encroachments. And  
12 we need to work on a process on how we move forward on  
13 that and how we deal with the enforcement issues, because  
14 we're not real strong in that area. You know, right now  
15 if there's a big issue and the locals won't take care of  
16 it, then we rely on the Attorney General's Office to  
17 handle it legally. And it hasn't been real effective in  
18 the past.

19           So we're going to have to have some discussions  
20 on, you know, possible changes in legislation or we're  
21 going to have to take up a firm stance and just go do some  
22 things and maybe get -- you know, get sued for it.

23           There's going to be some discussion on this. And  
24 it's a situation that won't go away.

25           The Corps put out a list of deficient projects

1 and asked for correction plans, which I think I indicated  
2 that 20 of the 28 LMAs submitted correction plans.

3 I know that we are a part of three of those  
4 deficient areas. One is on the east interceptor canal  
5 going into the Wadsworth. And it's more a question of how  
6 they built it as opposed to what the folks thought -- you  
7 know, they went and looked at it and they thought there  
8 was a levee there when it was really spoiled piles, and  
9 we're working through that issue.

10 Two others are channel maintenance on Deer and  
11 Elder creeks. And I could tell you, it will not be  
12 possible to get through the process, the environmental  
13 process in a one-season effort. I mean it's going to be  
14 multiple years of work. One of the areas on Elder Creek  
15 its full of arundo. And just to get to the arundo is  
16 going to take some time to get all of it out because it's  
17 intermixed with elderberry. And, you know, this is  
18 something that everybody agrees that we should. Yet it's  
19 still going to take time because of the bureaucracy that  
20 exists.

21 I am sure that other maintainers are going to  
22 have similar problems. And so the Corps saying that  
23 they're going to give you one year is tough.

24 As far as legislation, I'm not going to go into  
25 great detail on that. We had invited Kasey Schimke who is

1 our new Chief of our Legislative Affairs Office. And he  
2 was planning on coming. And then the Director preempted  
3 him. With the budget heading that, looks like that maybe  
4 we'll get something through possibly this weekend. He's  
5 on duty dealing with that. And so he does want to come in  
6 the future and introduce himself.

7           One thing I did want to talk a little bit,  
8 because I know there's been some discussion about how does  
9 DWR respond to these myriads of bills that are out there.  
10 The Department prepares an analysis of the various bills  
11 and they rely on program staff to develop positions on the  
12 bills. And then those positions are coordinated by our  
13 Ledge Affairs Office. They then go up to Agency and then  
14 to the Director.

15           The Department's positions are released through  
16 the Governor's Office, and that's when they become public.  
17 Prior to that, you know, we all have our opinions. But  
18 the Department's position comes through the Director and  
19 the Governor.

20           With that, I'm open for questions.

21           VICE-PRESIDENT HODGKINS: One of those bills I  
22 think is 276, which is the authorization for SAFCA's  
23 program that they eventually achieved, 200-year for  
24 Sacramento. And in the legislation, I think the Board  
25 should understand this, the bill recites in a very

1 summarized way the results of the analysis that was done  
2 in the EIR for SAFCA on hydraulic impacts. And in effect  
3 the bill says this project has no hydraulic impacts,  
4 because it does not change the relationship between water  
5 surface elevation and flow. Okay?

6 Now, I personally agree with that. But I think  
7 I'd like to know whether the Department of Water Resources  
8 agrees with that. And I -- we told -- I told Keith  
9 yesterday I was going to ask him this question. And I  
10 think that response that you just got about that DWR's  
11 position doesn't become apparent until it comes out of the  
12 Governor's Office is part of the response. But this is  
13 not their position on the bill. This is whether or not  
14 they would agree with the idea that if you haven't changed  
15 the relationship between flow and water surface elevation,  
16 the height of the water on the levee, that there are no  
17 hydraulic impacts.

18 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

19 SWANSON: And I'll give you some personal  
20 perspective on that. I'm always a little bit concerned  
21 when there's a public process to deal with something and  
22 then there's legislation passed that preempts that public  
23 process. Now, from my perspective, The Rec Board -- you  
24 guys -- I have all the confidence in The Rec Board's  
25 ability to determine whether there's an impact or not. I

1 agree with Butch on this. And what I have heard is that  
2 the SAFCA projects do not affect the amount of water  
3 coming down, the height of the flow that anybody's levees  
4 are going to seek. And they would -- you know, in the  
5 bill it says because of this, we don't have any hydraulic  
6 impact, or we don't have a significant impact.

7           What they really don't do is quantify what the  
8 term "significant" is. And that's to me why a public  
9 process is a little bit good, because then, you know, a  
10 board like yourself can determine -- make that  
11 determination, you know, what is significant. Is, you  
12 know, a millimeter significant, is an inch significant, is  
13 a foot significant? I think that's the kind of thing  
14 that's maybe good for public discussion as opposed to  
15 legislation that says it.

16           The second is, you know, they say, "It was in our  
17 environmental document supported by our engineering."  
18 Again, I would think that, you know, you as a body might  
19 want to have your technical staff look at that and making  
20 sure they agree with it.

21           I think it's probably right. I think it's  
22 probably --

23           BOARD MEMBER RIE: Excuse me. Don't they have  
24 that opportunity when they comment on the CEQA document?

25           DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

1 SWANSON: Probably. But there are lots of CEQA  
2 documents out there. And so I guess from my perspective,  
3 did it occur, are you guys satisfied?

4 And, you know, I'm just giving you my perspective  
5 on it and just -- you know, I'm just saying that you lose  
6 the ability to control things when its legislative. But,  
7 you know, I don't think there's a problem here. You know,  
8 we're not hearing about the CEQA project. You know,  
9 putting a slurry wall doesn't seem like it's a problem,  
10 putting a seepage berm. I mean I don't know the full  
11 extent of it, so, you know, that's me.

12 PRESIDENT CARTER: Are there any other questions  
13 for Mr. Swanson?

14 VICE-PRESIDENT HODGKINS: I'd like to make a  
15 comment on this issue.

16 Whether there's a problem here or not in terms of  
17 hydraulic mitigation is not really the point. The point  
18 I'm trying to make here is right now it's not possible for  
19 an applicant to work through our staff and getting in  
20 front of us and understand the whole explanation of  
21 whether there is a hydraulic impact or not. And the  
22 result of that is that the applicants are going around us.  
23 And so it's a problem we have to address. And it's very  
24 challenging from the standpoint of all the technical  
25 issues. But we're going to talk about it later today.

1 And I think you need to understand what you're seeing here  
2 is they can't get it up in front of the Board so we can  
3 deal with it. And they're going around us.

4 BOARD MEMBER RIE: Can I comment too, just  
5 briefly?

6 PRESIDENT CARTER: Yes.

7 BOARD MEMBER RIE: I completely agree with you,  
8 Butch. And I think there's a process in California law,  
9 and that's the CEQA process. It's a public process.  
10 Everyone including The Rec Board has an opportunity to  
11 review within the CEQA documents and comment. And CEQA is  
12 the proper avenue to look at impacts and mitigations,  
13 whether they're insignificant, significant, or mitigated.  
14 CEQA is the process for the State of California.

15 And this Rec Board can rely on CEQA. That's in  
16 the CEQA law. So I'd like to see our Rec Board start  
17 relying on those CEQA documents.

18 That's all.

19 PRESIDENT CARTER: Thank you.

20 Anything else?

21 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

22 SWANSON: No, not from me.

23 PRESIDENT CARTER: Okay. Thank you very much.

24 DIVISION OF FLOOD MANAGEMENT ACTING CHIEF

25 SWANSON: Thank you.

1           PRESIDENT CARTER:  Item 7, Department of Water  
2 Resources and Reclamation Board's Role in FEMA's  
3 Provisionally Accredited Levee Designation Program.

4           Mr. Morgan.

5           STAFF COUNSEL MORGAN:  Good morning.

6           Well, this title covers more than I will.  I  
7 really don't know anything about what the Department's  
8 role is going to be.  I can give you a little background.  
9 Unfortunately, I was ill last month when this item came up  
10 and I don't really know what all the discussion  
11 surrounding it was.

12           But shortly before that meeting, a week or two  
13 before, it came to staff's attention that FEMA had  
14 suggested that The Reclamation Board provide some sort of  
15 certification to FEMA about the adequacy of the levees  
16 under their provisionally accredited levee program.  And  
17 they were looking for the levee owner to be making this  
18 assurance for FEMA.  And my response was, "Well, we don't  
19 actually own the levee."

20           So, you know, what do you want from somebody?  
21 And what they wanted was somebody who had actual knowledge  
22 of the condition of the levees to be making these  
23 certifications.  And the Board really doesn't have actual  
24 knowledge of these levees for FEMA purposes.  Our  
25 knowledge, which comes to us essentially as a -- from

1 inspections and whatnot, is about the condition of the  
2 levees for Corps purposes, which is entirely different.  
3 And so everything that the Board would be evaluating would  
4 be based on some secondhand testimony.

5           We indicated that we are not owner, which is what  
6 FEMA had assumed, that we were. And so at that point they  
7 worked I think with the Department of Water Resources to  
8 see if the Department could instead provide the assurances  
9 they were looking for. And at that point I believe the  
10 Board dropped out of the picture.

11           So that's all I really know about it. I could  
12 answer any questions if there are any. But it was not a  
13 particularly long involvement as far as we were concerned.

14           BOARD MEMBER RIE: Under what federal process was  
15 FEMA asking The Rec Board to certify the levees?

16           STAFF COUNSEL MORGAN: I don't know. FEMA had  
17 come up with this on their own. And this was a federal  
18 decision. This had nothing to do with the state. They  
19 were just simply as a federal agency asking us to certify  
20 these levees. They said, "We're looking for the levee  
21 owner to certify." I said, "Well, we're not the levee  
22 owner."

23           BOARD MEMBER RIE: What was FEMA asking us to  
24 certify the levees for?

25           STAFF COUNSEL MORGAN: For the provisionally

1 accredited levee program, to say that whatever that  
2 program requires you to say about the levees, about their  
3 adequacy under FEMA. And since the Board standards are  
4 tied to the Corps standards, not FEMA standards, we could  
5 have really no knowledge about that.

6 BOARD MEMBER RIE: I'm a little confused, because  
7 FEMA was here last month and they said that they would  
8 accept certification from any licensed engineer in the  
9 State of California, that they didn't need a certification  
10 from either the Corps or the state.

11 STAFF COUNSEL MORGAN: And?

12 BOARD MEMBER RIE: So any engineer can certify a  
13 levee. That's what FEMA had told us last month.

14 STAFF COUNSEL MORGAN: Okay. But I'm not sure I  
15 understand if there's a question regarding the Board.

16 BOARD MEMBER RIE: I'm just confused as to -- you  
17 said FEMA is asking the state to certify these levees, and  
18 FEMA told us last month that they were in fact not doing  
19 that, that they would accept certification from a  
20 Registered Professional Engineer.

21 Did you want to answer that?

22 MS. SOUTIERE: Yes. I was here last month.

23 I'm Judy Soutiere. I'm with the U.S. Army Corps  
24 of Engineers. I'm the Flood Risk Manager for Sacramento  
25 District. I was here last month and provided a little bit

1 of a discussion on this.

2           What FEMA is asking for under the PAL designation  
3 is an understanding from the levee owner, the surrounding  
4 community. And the reason The Reclamation Board was sent  
5 letters is because -- from the Corps of Engineers on our  
6 federal levee system, our owner is The Reclamation Board.  
7 We see them as the owner and operator of the levee. Yes,  
8 you've delegated that authority to the local maintenance  
9 districts and RDs to maintain the levees. But ultimately  
10 when they look at our federal levees, they're looking at  
11 The Reclamation Board as the signatory of our PCAs.  
12 Therefore they are the ones -- why they sent letters to  
13 the Reclamation Board saying, "Do you feel that these  
14 levees might be certifiable within the next two years?"

15           Not anything to actually certify them today?  
16 That's not what the PAL agreement is. It's for, "Can you  
17 get the information in the next two years for actual  
18 certification?" And the actual certification would be  
19 done by a licensed professional engineer. Or if they came  
20 to the Corps of Engineers on the federal levees only, they  
21 would ask the Corps of Engineers for certification. But  
22 at this point it's just a, "Do you think they can be  
23 certified within the next two years?" and "Are you  
24 agreeable for everyone to proceed forward towards that for  
25 the purposes of mapping only?"

1 BOARD MEMBER RIE: Thank you.

2 MS. SOUTIERE: Does that help?

3 BOARD MEMBER RIE: Yes, that clarifies it.

4 VICE-PRESIDENT HODGKINS: Scott, did you say who  
5 owns these levees? Whose levees are they, in your view?

6 STAFF COUNSEL MORGAN: Well, the Board's interest  
7 in the levees is not as an owner of the levees. The  
8 Board's interest is regulatory. I mean there are few  
9 places where we actually do own the levees. We're the fee  
10 owner of the property. These are fixtures on real estate.  
11 And the real owner usually can do very little to almost  
12 nothing on those levees without permission of the  
13 Reclamation Board and the Corps of Engineers.

14 And the owner in the sense that FEMA's talking  
15 about more properly is the local entity, not the State  
16 Reclamation Board. But in terms of looking for somebody  
17 who has specific knowledge about the current conditions of  
18 the levees to provide any assurances, if FEMA is looking  
19 for an entity that can provide information, it really is  
20 not the Board.

21 BOARD MEMBER RIE: It would be the reclamation  
22 districts?

23 STAFF COUNSEL MORGAN: Well, or the Department of  
24 Water Resources, which was recent -- I mean it was the  
25 Department that received bond monies, not the Board. And

1 so the Department is undertaking extensive studies of the  
2 integrity of levees. And, again, my understanding is that  
3 FEMA is working with the Department to provide assurances  
4 on those levees.

5 PRESIDENT CARTER: Mr. Punia.

6 GENERAL MANAGER PUNIA: Just a little bit trying  
7 to clarify this.

8 We had discussions with DWR staff. And what FEMA  
9 is looking for is the 100-year level of protection. We  
10 had another relationship with the U.S. Army Corps of  
11 Engineers where the Corps indicated that the state and the  
12 Board will maintain the levees up to the design profile,  
13 which is 1957; whereas FEMA was looking for 100-year  
14 certification.

15 So the conclusion of our coordination with DWR  
16 was that if they're -- FEMA is looking for 100-year  
17 certification, then it's not the Board, but the DWR is  
18 more appropriate state agency to represent on the PAL  
19 agreements.

20 STAFF COUNSEL MORGAN: And that really was more  
21 if the federal government wants this. This is not  
22 something that the Board would normally do. It's not  
23 really something the Department would normally do. But  
24 the Department is accumulating information that they  
25 believe they can fit that purpose. That's their call.

1 But the Board doesn't have that information.

2 BOARD MEMBER RIE: Does the Department have the  
3 authority under the Water Code to sign any sort of  
4 agreements on behalf of The Rec Board?

5 STAFF COUNSEL MORGAN: That's a question for the  
6 Department. In fact, I think they believe they do.

7 BOARD MEMBER RIE: It would be interesting to see  
8 what that is.

9 PRESIDENT CARTER: I guess the question I have  
10 is: Is the Board comfortable with this kind of an  
11 arrangement? I think this issue of ownership I think  
12 we're kind of side-stepping and dodging it. It really I  
13 think -- my perspective is the Board is the custodian of  
14 the levees and the buck stops here as opposed to at the  
15 reclamation district or with DWR.

16 So I think that the explanation that we're not  
17 the owner is kind of dodging the issue. I don't -- I  
18 guess I don't agree with that. I think that -- as I said,  
19 I think the buck stops here.

20 With regard to whether or not DWR ought to be  
21 doing these or the Board, it's a gray area. And I think  
22 it's really a question for the Board and DWR as to: Are  
23 we comfortable with that kind of arrangement? Is that  
24 okay with us? And if it means that DWR is signing PAL  
25 agreements on behalf of the state and perhaps The Rec

1 Board, are we comfortable with that?

2 STAFF COUNSEL MORGAN: I believe they'll be  
3 signing on behalf of the Board. And I think they are  
4 signing at the request of a federal agency, saying, "We  
5 would like somebody with more information than the locals  
6 to say that they agree with what the locals have said."

7 And, frankly, if the Board were to take on that  
8 role, they would be getting their information from the  
9 Department, I expect because the Department is the one out  
10 there doing the studies to determine the adequacy of the  
11 levees.

12 And so as I said, the Board doesn't have any  
13 special knowledge about FEMA standards. It's tied to the  
14 Corps and the Corps specs, which are unrelated to FEMA  
15 standards. They could overlap coincidentally, but that's  
16 not the standard of our flood control project.

17 But, again, our communication wasn't with the  
18 FEMA to say, "Well, you've got the wrong person because  
19 we're not technically the owner." Really in terms of who  
20 the owner is, again we see the -- the entity that  
21 regulates these or, you know, has the day-to-day  
22 responsibility for them, that's the local entity, the  
23 reclamation districts for the most part. But what FEMA is  
24 looking for is somebody that has actual knowledge about  
25 their current conditions at the state level. And that's

1 not the Board. The Board just doesn't have that  
2 knowledge; and, again, for FEMA purposes.

3 PRESIDENT CARTER: We have a couple members of  
4 the public that wanted to address the Board on this  
5 particular item.

6 Mr. Churchwell.

7 MR. CHURCHWELL: Thank you, President and Board  
8 members.

9 Regarding this consideration on PAL signing, I'd  
10 like to make a few statements here as far as participation  
11 of the Board in this matter.

12 The Reclamation Board is given the authority to  
13 regulate project work in the Sacramento and San Joaquin  
14 River system. It was created to openly conduct reviews  
15 and approve matters impacting the project facilities and  
16 the forum providing public accountability.

17 The Board also relies on DWR staff to provide  
18 technical input, inspections, and recommendations  
19 regarding the project works. But the final decision  
20 making is reserved for the Reclamation Board in an open  
21 public forum.

22 There are also technical experts within agencies  
23 in San Joaquin County that maintain and operate project  
24 levees, and can provide technical information and provide  
25 input in interpreting FEMA Criteria 6510 to the Board. By

1 delegating this, the approval of levee ownership to the  
2 Department of Water Resources, it eliminates the ability  
3 for the Board to obtain public information and input.

4           And I would also like to say that FEMA  
5 process -- the FEMA PAL signing agreement possess is a  
6 90-day process. And the clock is ticking. Final signed  
7 PALs have to be to FEMA by August 24th of this year.

8           That's all I have.

9           PRESIDENT CARTER: Thank you.

10          Mr. Hartmann.

11          MR. HARTMANN: Good morning. And thank you for  
12 allowing me to speak.

13          Members of the Board, staff, Mr. Morgan. My name  
14 the George Hartmann. I'm an attorney practicing in  
15 Stockton, California. I represent Reclamation District  
16 2074, Brookside. I'm here to talk to you about PALs and  
17 the signing of PALs.

18          Our district fortunately in the latest FEMA flood  
19 map is shown to have fully certifiable 1 percent chance  
20 flood levees. And so we thought we could relax and say,  
21 "Oh good." But there's a bigger picture and it's directly  
22 impacted by something Mr. Morgan told you, which I think  
23 I'll be telling you a different story.

24          If -- pardon me. Even though our levees are  
25 certifiable, our district can be flooded from other

1 directions. And so we could find ourselves and our  
2 several thousand residents in the unhappy circumstance of  
3 having fully accredited certified levees but being a  
4 special flood risk zone. I don't think anyone  
5 wants -- would appreciate that or wants that.

6           And so let me be very specific today. I'm here  
7 to put various things on the record and to attempt to  
8 persuade the honorable Board members that, as Mr. Carter  
9 said, the buck stops here, because it does stop here  
10 legally. And I don't mean to contradict your esteemed  
11 counsel, but he isn't telling you the law the way I read  
12 the law. Maybe he has a different edition of the State  
13 Water Code than I do, but I don't think so.

14           And I have to confess that my presentation is not  
15 as well organized as I would like it to be. We're  
16 operating under some very severe time constraints, as Mr.  
17 Churchwell pointed out. We have 34 days left, and FEMA  
18 has said they will not grant extensions.

19           And so I'm here to speak to you directly today  
20 and specifically and only about your role with another hat  
21 on. And that's the Sacramento/San Joaquin Drainage  
22 District. That's you -- that's also you.

23           And you are the owners of these levees. The  
24 state by legislative act joined with the federal  
25 government in the Calaveras River Flood Control Project,

1 circa 1953. And I'm here to talk to you about the  
2 Calaveras River. It is presently shown on the FEMA flood  
3 maps -- the proposed maps as PAL eligible but with  
4 operation and maintenance deficiencies.

5           It is somewhat unclear what the O&M deficiencies  
6 are, but they appear to be various encroachments on the  
7 south bank, which, as far as we can tell, have all been  
8 permitted by you. The levees are inspected by you or at  
9 your request or by your agents. The encroachments were  
10 handled through you.

11           And, quite frankly, this is your levee by virtue  
12 of the explicit language of the Water Code, the  
13 legislative act that created the drainage district in  
14 question, Calaveras River District.

15           And so this levee from a legal standpoint is not  
16 unlike the levee that failed in the Paterno case. It  
17 occupies the same legal stature as far as I can tell. And  
18 I confess to have not done -- or done -- having not done a  
19 great deal of intensive research, but I've done enough  
20 hopefully to bring to you today to cause you to think  
21 about this carefully, I hope, and do the right thing for  
22 us.

23           I'm going to give you a few conclusions and then  
24 I'm going to provide you with some specifics and then I'm  
25 going to sit down.

1           But after reading the Water Code and the sections  
2 I'll cite to you toward the end, I'm of the current  
3 opinion and conclusion that you sitting as the drainage  
4 district have the non-delegable duty to sign the PAL. The  
5 purpose of the PAL is to provide all of us time to  
6 determine whether the Calaveras River levees are  
7 certifiable. If you don't sign the PAL, now or if there's  
8 another time to sign that, but I think it's now, if you  
9 don't sign it a year from this September or October,  
10 almost all of the City of Stockton will be in a special  
11 flood risk zone, including areas that have certified  
12 levees, like the district I represent.

13           The non-delegable duty arises out of the original  
14 legislation of the state when it joined with the federal  
15 government to cosponsor this project. The contract's  
16 between the drainage district and the federal government  
17 whereby the drainage district undertook the maintenance,  
18 administration, control and ownership of the project and  
19 indemnified the federal government against any liability.

20           So I don't know how you couldn't be the owner.  
21 That escapes me. And I was happy to hear your comments,  
22 Mr. Carter, because there's probably a lot of  
23 misinformation or disinformation out in the public that  
24 the real agenda of the state has nothing to do with flood  
25 protection; it has to do with shifting Paterno liability

1 the National Flood Insurance Program. And if by some  
2 stretch of the imagination that's really what's going on  
3 here, that's not authorized by statute. Your job as the  
4 drainage district is to prevent flooding and to protect  
5 the public from flooding. There's no statutory authority  
6 for you or DWR to engage in risk shifting to the National  
7 Flood Insurance Program. And I'm not accusing of it. I'm  
8 just saying we're hearing this. We're hearing -- it is  
9 all hearsay. I know some senior officials have said  
10 explicitly that's what we're doing. But that's hearsay  
11 and it's not public testimony. So I don't know.

12 But you as the drainage district do not have any  
13 authority or directive, legislative or otherwise, to  
14 engage in risk-shifting conduct. And we've heard, we've  
15 been told -- I'm not accusing anybody of anything -- we've  
16 heard that the state will not sign PALs or will find a way  
17 not to sign PALs or will let the 90 days run so it doesn't  
18 have to sign PALs in order to shift risk -- Paterno risk  
19 into the National Flood Insurance Program.

20 So some background for you.

21 PRESIDENT CARTER: Briefly?

22 MR. HARTMANN: I'll try to be brief, as brief as  
23 I can. I'm sorry, Mr. Carter.

24 The flood control project we're talking about was  
25 approved by an act of Congress and the State Legislature

1 in 1953. And these points all have to do with your  
2 ownership and your duties. And I'll be as quick as I can.

3           Your authority is now in the Water Code. Also  
4 you're obligations. Section 12657 requires the Board to  
5 give assurances satisfactory to the Secretary of the Army,  
6 that the local cooperation will be furnished by the state  
7 in connection with the flood control projects authorized  
8 and adopted in Section 12652, including this one.

9           The State through The Reclamation Board is a  
10 partner with the federal government in the project by  
11 contract. The Sacramento and San Joaquin Drainage  
12 District and The Reclamation Board has a relationship.  
13 The district is an entity described in the five brief  
14 sections of the Water Code, sections 8501 through 8505.  
15 In Section 8502 it is provided the management and control  
16 of the district invested in The Reclamation Board.

17           Your fundamental challenge is in Section 8525.  
18 In it the report of the so-called Debris Commission was  
19 approved as a plan for controlling the flood waters of the  
20 Sacramento and San Joaquin rivers and protection of lands  
21 that are susceptible of overflow.

22           Section 8526 requires the Board to execute the  
23 plan. The plan which originated with the Debris  
24 Commission's report is an ever-evolving document.

25           There are some policy declarations. In Section

1 8532 the Legislature provided that the state has a primary  
2 interest in adequately protecting lands overflowed or  
3 subject to overflow and in preserving the welfare of the  
4 residents and the holders there.

5           Section 8533 provides that the state has a  
6 primary and supreme interest in flood protection along the  
7 Sacramento and San Joaquin rivers and their tributaries.

8           The relevant powers and duties of the Board are  
9 spelled out in several sections. Section 8534 mandates  
10 the Board at all times to enforce measures needed for  
11 flood protection in the Central Valley.

12           Section 8590(d) authorizes the Board to make  
13 contracts to indemnify or compensate any injured land  
14 owner.

15           Section 8617 requires the Board to give  
16 assurances to the Secretary of the Army (a) that the State  
17 will provide all hands necessary for the projects, (b)  
18 that the state will hold the U.S. harmless, and (d) that  
19 the state will do all things required or necessary under  
20 the Federal Flood Control Acts.

21           A PAL agreement is not levee certification. It  
22 is a statement that to the best of your knowledge -- and I  
23 think that would include the knowledge of your agents and  
24 those working for you -- the levee meets the requirements  
25 of I think it's 5610 CFR, or 6510, one of the two. You're

1 not saying that in fact to a certainty the levees meet  
2 that standard. You're saying to the best of your  
3 knowledge.

4           And the purpose of the PAL is to give us a couple  
5 of years to either prove that the levees are certifiable  
6 or not. The operation and maintenance encroachments that  
7 are portrayed in this situation, nobody knows if they  
8 create any fatal flaws. Grass on a levee is not a fatal  
9 flaw. And encroachments permitted by the state are not  
10 fatal flaws. A boat in the water on a dock is not a fatal  
11 flaw.

12           And of course the way FEMA does flood projection,  
13 if any part of the levee fails, the whole levee fails, and  
14 then they do the hydrological analysis and show where the  
15 water goes. And that pretty much takes out the City of  
16 Stockton.

17           And so in the interests of brevity -- and I  
18 don't -- that's not meant that in any way I'm eliminating  
19 a portion of any presentation. And depending on what you  
20 do today, I would like the ability to submit further  
21 written comments after you make decisions.

22           Let me say this to you, if the state refuses to  
23 sign a PAL -- and FEMA has said the state must sign a PAL.  
24 That's the current stance of FEMA as we understand it.  
25 The failure to do that, and putting us into a special

1 flood risk zone because of Calaveras River flooding, would  
2 significantly disrupt and disable any effort to improve  
3 flood protection. Loss of property values and  
4 discontinuation of development will cripple the ability of  
5 the homeowners, landowners and cities to contribute to the  
6 funding of the desired improvements, which are needed to  
7 protect an already established, largely populated, and  
8 highly developed area.

9           We believe -- we request -- it's almost to the  
10 point of begging given the passage of time -- that the  
11 Board acts, that you give us the time and the means to  
12 study these issues to determine whether any of the O&M  
13 deficiencies in fact create fatal flaws. And we're hoping  
14 that the state doesn't do something arbitrary and adopt a  
15 policy without going through the proper channels to say  
16 that O&M deficiencies somehow create fatal flaws. You  
17 have to go further than that. You've got to prove it.  
18 It's got to mean something. Those Calaveras levees are  
19 stable. None of the encroachments, as we understand them,  
20 affect stability. And that's my request.

21           Thank you. I'll answer any questions you may  
22 have.

23           PRESIDENT CARTER: Any questions for Mr.  
24 Hartmann?

25           VICE-PRESIDENT HODGKINS: Are those encroachments

1 in a levee that's maintained by the RD that you represent?

2 MR. HARTMANN: They are not. But they impinge on  
3 us if the levee fails.

4 VICE-PRESIDENT HODGKINS: Okay. Thank you.

5 BOARD MEMBER RIE: I have a question.

6 I don't have a copy of your particular PAL  
7 agreement, but I've seen all of the PAL agreements for the  
8 reclamation districts in Contra Costa County. And what  
9 they typically say is the person who signs the  
10 agreement -- and it's usually the reclamation districts  
11 for the ones that have already been signed -- is "We  
12 promise to provide FEMA with maintenance records,  
13 geotechnical engineering records, soils reports, stability  
14 analysis." There's a whole list of things that FEMA  
15 requires. So isn't the PAL simply within the next two  
16 years "We promise to provide" all this information to  
17 FEMA? Isn't it as simple as that?

18 MR. HARTMANN: It is almost as simple as that.  
19 There is another statement in the PAL that says, "To the  
20 best of our knowledge, the levee provides protection  
21 against the 1 percent chance flood." It's not an absolute  
22 statement. It says, "To the best of our knowledge." And  
23 at this point I would submit to you neither DWR nor the  
24 Board knows anything to the contrary. We know there are  
25 encroachments there, but we don't know what they do.

1           Mr. Neudeck is present in the audience and -- Mr.  
2 Hodgkins, and he can speak directly to the type of  
3 encroachments if you'd like to know.

4           But as I started out saying, our district is  
5 surrounded by levees that are going to be fully certified.  
6 But if the Calaveras River levees are not, then we'll  
7 still be in a special flood risk zone. That's the nexus  
8 the brings me here today to make these comments.

9           And so I think there's a little bit more to it  
10 than you're saying. But intrinsically the answer is yes.  
11 And there is no reclamation district or -- I take that  
12 back. There could be. But the County of San Joaquin is  
13 the general maintaining agency for this flood control  
14 project levee, and they are fully prepared -- Mr.  
15 Churchwell is here; you can ask him questions -- they are  
16 fully prepared to provide all of the necessary information  
17 and data to FEMA. They are in contract with you to do  
18 that. You have delegated these duties to them. So you  
19 might say why wouldn't FEMA just be satisfied with them  
20 signing the PAL. And the answer is FEMA isn't. And  
21 they've made it pretty clear that if the state doesn't  
22 sign, they won't approve the PAL. That's my best  
23 information to date.

24           BOARD MEMBER RIE: Okay. Thank you.

25           PRESIDENT CARTER: I want to remind the Board and

1 the audience that this is not an agenda item.  
2 The Board cannot take action today. If we decide that  
3 some action needs to be taken, it needs to be agenda  
4 for a future meeting. Which puts us in somewhat of a  
5 dilemma given the timeframe.

6 MR. HARTMANN: May I respond to that, Mr. Carter?

7 PRESIDENT CARTER: Yes.

8 MR. HARTMANN: I would think that the act or  
9 failure to act in this situation, given the time limit,  
10 equates to the same outcome. And a meeting on the 24th of  
11 August won't help, and that's why I'm practically down to  
12 begging, even if it takes a special meeting to consider  
13 it.

14 Thank you.

15 PRESIDENT CARTER: We'll take that under  
16 consideration.

17 Mr. Morgan.

18 STAFF COUNSEL MORGAN: Yes. I just wanted to  
19 clarify that indeed the Board does have a relationship  
20 with the federal government, with the Corps of Engineers  
21 on this project. And it has accepted this project from  
22 the federal government and has agreed to operate and  
23 maintain and indemnify the federal government.

24 But that does not create a relationship with  
25 every federal agency out there. If Fish and Wildlife

1 wanted us to certify something about endangered species on  
2 the levees, I would say, "Well we're really not the entity  
3 to do that." I mean we, this Board, is responsible for  
4 the levees as flood control structures.

5           This is not a flood protection measure. These  
6 PAL agreements won't provide any additional flood  
7 protection for anybody. They will change what people may  
8 or may not do behind the levees in a period of time it  
9 takes to provide FEMA with certification. The fact is  
10 FEMA is using the same levees that the Corps and the  
11 Reclamation Board constructed for some purpose other than  
12 the one the Corps and the Board constructed. I mean  
13 they're using them to determine levels of flood risk and  
14 insurability. And the Board and the Department -- or the  
15 Corps and the Department -- or Corps and Board have  
16 constructed those levees primarily to provide flood  
17 protection per se, not at a statistical level of  
18 probability.

19           And, again, I don't know -- over a month ago was  
20 the one and only discussion I had about this issue with  
21 staff from the Board, the Department and FEMA. And I  
22 exited the scene. I really don't know what has transpired  
23 since then. But Ms. Lani Arena is here. She's with staff  
24 counsel with the Department of Water Resources. If you  
25 would like to ask her about this, she's prepared to

1 explain what has transpired since and what's going on.

2 But, again, the critical thing here is this is  
3 FEMA's call, not the State of California's call. It's a  
4 federal agency, not one we deal with normally, that wants  
5 somebody from the state to provide some information to it.  
6 And the Board is not the entity that has that information  
7 firsthand.

8 BOARD MEMBER BURROUGHS: Could I ask Judy if she  
9 could come back up.

10 Thank you.

11 Judy, could you just comment on the last two  
12 speakers that spoke?

13 MS. SOUTIERE: We do have maintenance  
14 deficiencies, as was mentioned earlier by Keith Swanson.  
15 Corrective action plans were submitted to the Corps of  
16 Engineers that were required to be submitted by the 30th  
17 of June. And we are currently reviewing them.

18 What is going to happen with the maintenance  
19 deficiencies as far as FEMA mapping is concerned is they  
20 will not make the maps effective until the one-year  
21 maintenance correction period is completed. But if we  
22 determine that those maintenance deficiencies and the plan  
23 of action doesn't work, then they will be mapped in the  
24 special flood hazard area. Yes, that may mean that one  
25 area has certified levees and that another area does

1 impact and could -- by potential flooding and put the  
2 other area in the special flood hazard area. Stockton is  
3 a major concern because we do have levees -- federal  
4 levees that have been certified maintenance deficiencies.  
5 And how is all that going to play out? We don't know at  
6 this point in time. We're still evaluating that.

7 BOARD MEMBER BURROUGHS: Do you think it's  
8 realistic to put a one-year time limit on getting prepared  
9 to provide you with all this information?

10 MS. SOUTIERE: As far as the maintenance  
11 deficiencies, we were given guidance from national -- from  
12 our national headquarters that said it's a one-time offer  
13 on maintenance deficiencies of one year. If you go  
14 through the inspection cycle this year and you get  
15 maintenance deficiencies, you're not going to be given one  
16 year to.

17 And this on the Corps side has impact only on our  
18 PL 84-99 program for rehabilitation. For the FEMA  
19 purposes, because of where FEMA is on their mapping  
20 program where they're doing the San Joaquin Valley and the  
21 Bay Area right now this year, our maintenance deficiencies  
22 are affecting their maps. And the one-year period affects  
23 their maps.

24 When they go into the Sacramento Valley, which  
25 they expect to do in FY '08, most of our maintenance

1 deficiencies, that one-year period, will be up and will  
2 not impact their mapping at that time. They will either  
3 be eligible or they won't be.

4           So at this -- one year it was determined for the  
5 nation we didn't have any control over it. We know that  
6 on encroachment issues it may take more than one year to  
7 fix. But we don't have a call on that. We're looking at  
8 the corrective action plans right now. And once we figure  
9 out what's going on with those and which ones we will  
10 approve and which ones we won't, everyone will be  
11 notified. So on this one I don't know where we are. I  
12 know we're evaluating right now, and I don't have the  
13 answer.

14           BOARD MEMBER BURROUGHS: I know that it came from  
15 the top down. But from the bottom back up is the message  
16 being sent about when you're not being realistic?

17           MS. SOUTIERE: It is realis -- we have talked it  
18 over with our headquarters to let them know that in some  
19 cases it may not be realistic. Again, it's a matter of  
20 we're working with them but there's been no budge on that  
21 at all. And so we have one year and one year only.

22           BOARD MEMBER BURROUGHS: Is there a possibility  
23 of an extension at all?

24           MS. SOUTIERE: I would say probably not, but  
25 we'll see when it comes closer to the end of one year.

1 BOARD MEMBER BURROUGHS: Thank you.

2 BOARD MEMBER RIE: Is there anybody here from  
3 FEMA?

4 MS. SOUTIERE: No one is from FEMA today. I  
5 don't believe they're here.

6 BOARD MEMBER RIE: Do you happen to know why FEMA  
7 wanted DWR to sign these agreements rather than The Rec  
8 Board?

9 MS. SOUTIERE: FEMA really doesn't care who signs  
10 the agreements. They want the State of California. Part  
11 of it is is they're looking at -- when we say it's our  
12 federal levee, our non-federal sponsor we consider the  
13 State of California and The Reclamation Board. Now, The  
14 Reclamation Board and DWR does most of the technical  
15 support for The Reclamation Board. They see it as just  
16 the State of California really as the person that needs to  
17 sign it. They also ask where for the community that is  
18 being protected by those levees to also sign the PAL  
19 agreement. And the reason they ask for the local  
20 community to sign is because they want the local community  
21 to understand that for a two-year period until those  
22 levees are either certified or are not certified and  
23 proven they can't be certified, that the local community  
24 understands that they are potentially at risk and that  
25 they could potentially be required to buy flood insurance.

1           So they're not asking just the owner of the  
2 levee, but they're also asking the local community that is  
3 protected by those levees. And so there's a couple of  
4 reclamation districts where they have to have three  
5 communities sign a PAL agreement along with the  
6 reclamation district and with the State of California.

7           BOARD MEMBER RIE: Are the reclamation districts  
8 signing the PAL agreement?

9           MS. SOUTIERE: They are required to. And if we  
10 don't get -- and according to FEMA, if they don't get all  
11 three signatures, they're not going to be able to accept  
12 the PAL. And so that area would be mapped in the special  
13 flood hazard area.

14          BOARD MEMBER RIE: I don't understand why the  
15 reclamation districts can't just sign on behalf of the  
16 state, because they have contracts with The Reclamation  
17 Board to perform the maintenance and operation of all of  
18 these levees.

19          MS. SOUTIERE: I'm not the -- I can answer some  
20 of how FEMA came up with it. I don't know exactly why  
21 they said they have to have the state, other than because  
22 the Corps of Engineers looks at the state as the  
23 signatory. And this was something that they worked out  
24 through their counsel as to who had to sign these  
25 agreements.

1 BOARD MEMBER RIE: Thank you.

2 PRESIDENT CARTER: Mr. Hodgkins.

3 VICE-PRESIDENT HODGKINS: Well, I agree with you,  
4 Ben. I mean I think the buck stops here. And to me, the  
5 way to balance and deal with what Scott said and what  
6 these folks are saying is I think DWR is the people with  
7 the technical information. I mean they are out boring  
8 holes and evaluating 350 miles of urban levees. And we've  
9 heard Rod at our last meeting say that on RD 17 they  
10 weren't signing the PAL because they had information early  
11 on those -- that indicated to them the levees did not meet  
12 the criteria for taking the certification. So to me the  
13 logical thing would be, if we can do this without  
14 overwhelming our staff, if there is a disagreement between  
15 DWR and the local agencies, it's going to be over  
16 technical information presumably as to whether or not the  
17 levee -- whether or not the state has evidence that in  
18 case the levee does provide 100-year flood protection, I  
19 think this Board could deal with that -- if the state  
20 would present their information and the local  
21 representative would present theirs, then we could deal  
22 with it. I think the thing to be a little careful about  
23 here is that it's that it's not what we want to assign to  
24 our staff, because they're already overworked. And so if  
25 we have to begin a new partnership with DWR, where DWR

1 would agree to work with the applicant so they would be  
2 able to in a half an hour describe what the dispute is  
3 over. So that's kind of how I see it.

4 MS. ARENA: Good morning. I'm Lani Arena, Staff  
5 Counsel for the Department of Water Resources. And I  
6 think I can answer some of your questions.

7 I'm the person who's working with FEMA's regional  
8 engineer on modifying these PAL agreements. And I think a  
9 number of the comments that have been made today, first of  
10 all, they reflect a misunderstanding of federal law that  
11 authorizes it. They reflect a misunderstanding of the  
12 purpose of the PAL agreements. And I'd like to start with  
13 that.

14 Why are we being asked to do it? Let's start  
15 with the federal law. The federal law does not require  
16 the owner. The federal law requires any interested --  
17 anybody that FEMA wants to do it. It's any interested  
18 party. And FEMA has made the determination that they want  
19 the State of California. They started out by asking for  
20 the owner. And after we had discussions with them and  
21 explained that the owner -- it's a little bit of a tricky  
22 issue, we asked them, "What is it you really need?" And  
23 what they really need is the 100-year certification. Then  
24 we talked about the fact that if we -- and these were in  
25 discussions that took -- they included Mr. Punia and Mr.

1 Morgan, people from DWR and myself, as well as Kathy  
2 Schaefer from FEMA. We made the determination that The  
3 Rec Board can certify to design, DWR can certify to  
4 100-year. And if FEMA has made the determination under  
5 federal regulation, which they are entitled to do, that  
6 what they need is 100-year certification, then DWR is the  
7 agency that can provide that. That goes to who from the  
8 federal law standpoint.

9           Can DWR -- do we have the authority to do it?

10 Yes, we do. We have it pursuant to the laws that provide  
11 us with authorities to oversee O&M, the laws that provide  
12 that we're partner with FEMA in the National Flood  
13 Insurance Program. I apologize, I don't have my full file  
14 with me because I wasn't anticipating that I'd be making  
15 an appearance before you this morning. But I certainly  
16 can provide you with, you know, all the citations in terms  
17 of our authorities, because we have looked at this issue.  
18 We are indeed authorized to sign these agreements.

19           Your one very big distinction here is the purpose  
20 of these documents. The purpose of these documents --  
21 this is a provisional authority that allows the applicant  
22 time to gather documents after they have certified that  
23 they believe to the best of their ability that these  
24 levees meet the standards and they have been complying  
25 with all the required O&Ms. The purpose is not to study

1 O&M deficiencies to determine if they create fatal flaws  
2 and then see if we can fix them. It is absolutely not to  
3 bring them up to 100-year level within that time period.  
4 You are certifying that you believe to the best of your  
5 ability that -- best of your knowledge, excuse me -- that  
6 they're at that level, you just don't have the documents  
7 at hand and indeed a year to grab your documents and  
8 present them.

9           That's the purpose. That's why it's only a year.  
10 Shouldn't take you longer than a year to get your  
11 documents together.

12           So from the standpoint of DWR giving a  
13 certification, the certification would be based on an  
14 assessment by professional engineers that to the best of  
15 our knowledge they -- you know, they'll take a look at the  
16 documentation, they'll evaluate it, and they'll determine  
17 it either, you know, meets the 100-year certification or  
18 it doesn't.

19           And DWR has absolutely not taken a position that  
20 it will not sign PAL agreements. However, there's no  
21 intention to sign them blindly, you know. We will take a  
22 look at the evidence to determine if the levees, you know,  
23 meets the standard. They will be evaluated by our  
24 professional engineers to make that determination.

25           So perhaps that clarifies the purposes of the PAL

1 agreement, how it is that we got to the point where DWR --  
2 it made sense for DWR to be signing it. Perhaps that  
3 answers your questions in terms of whether we have  
4 authority. Perhaps not fully enough because I don't have  
5 all my citations with me. But I will be glad to come  
6 back, you know, and make a fuller presentation with full  
7 authorities or anything more that you would like.

8           We have been working with FEMA to tailor the  
9 agreement, because the standard agreement that they wanted  
10 us to sign also says we would be providing information,  
11 which we would not be. It's up to the locals to provide  
12 the information. So the revised agreement that we would  
13 be willing to sign basically just says it meets 100-year  
14 flood protection level. So they have agreed with us,  
15 which is kind of amazing, but they've agreed with us that  
16 we can have a customized agreement that we would sign that  
17 just says, "100-year level of flood protection. Signed:  
18 State of California by DWR," and doesn't say we're signing  
19 on behalf of The Reclamation Board, it doesn't say we're  
20 signing as owner. It just says State of California,  
21 Department of Water Resources.

22           BOARD MEMBER RIE: And what are you signing on  
23 behalf of?

24           MS. ARENA: We are signing of behalf of the State  
25 of California.

1           BOARD MEMBER RIE: No, no. What are you saying  
2 when you're signing it?

3           MS. ARENA: "X levee" -- and it gets described --  
4 "meets" -- assuming this is the case -- "after we've  
5 reviewed the evidence, to the best of our information, it  
6 meets the 100-year flood protection level." And we  
7 wouldn't sign it if we didn't come to that conclusion.  
8 But that's the gist of the language.

9           BOARD MEMBER RIE: Well, I think last month DWR  
10 staff told us that if they didn't have the information,  
11 they had no intention of signing these PAL agreements.  
12 And staff said that it would take two years for them to  
13 get the information. So I had the impression that DWR  
14 staff wasn't going to sign anything.

15           MS. ARENA: That's -- I'm not sure who might have  
16 said that or what they might have had in mind. And maybe  
17 what they were thinking of is the fact that we have these  
18 very comprehensive levee evaluation programs underway.  
19 It's not our intention to wait for those levee  
20 evaluations, so that reflects a misunderstanding.

21           We would be taking a look at whatever levee is  
22 put before us on this issue and evaluating the evidence  
23 for that. We would do -- we would examine that  
24 particular levee. We would not be waiting for these  
25 comprehensive studies to be done.

1           So, no, we don't -- we have not taken the  
2 position that we will not sign them. We've not taken the  
3 position that we will wait two years to take a look at  
4 these things.

5           BOARD MEMBER RIE: Okay. The PAL agreements that  
6 need to be signed right now are due to FEMA August 24th.  
7 Is DWR going to sign all the PAL agreements before August  
8 24th?

9           MS. ARENA: To my knowledge -- and only one has  
10 been presented to us, and I have to double-check to find  
11 out if -- and that was as of last month. Perhaps more  
12 have been presented since then. And I believe we have  
13 some concerns because we have evidence that it may not  
14 meet the 100 year. I don't want to speak for the  
15 engineers that are examining it. But the bottom line is,  
16 with respect to the one that is before us, they will have  
17 to examine it and we will have to have the engineers that  
18 are looking at it make that assessment. I don't even  
19 really want to go on the record because that is saying it  
20 has problems, because that's what I've heard as  
21 scuttlebutt. And I don't even know if it's referring to  
22 that particular levee. So maybe it is, maybe it isn't.  
23 But we do an assessment with respect to whatever it is  
24 before us by the engineers.

25           BOARD MEMBER RIE: Last month and today I asked

1 our attorney for the Water Codes that give DWR the  
2 authority to sign these agreements. And I haven't heard  
3 any authority yet. And I've reviewed the codes myself and  
4 I can't find anything.

5 MS. ARENA: Well, I can come back this afternoon  
6 with them.

7 BOARD MEMBER RIE: Okay. Can we have her come  
8 back this afternoon?

9 PRESIDENT CARTER: Yes, we can.

10 BOARD MEMBER BURROUGHS: I have a question also.

11 If DWR is going to review this information, can  
12 you tell me, one, do they have the staff to get it done in  
13 a timely manner? And do you believe that you can get all  
14 the information in that time restriction?

15 MS. ARENA: I really would like to double-check  
16 with the engineers that are doing this, because I've  
17 looked at this from a legal standpoint and I've been  
18 working with FEMA on the agreements.

19 I feel like I'm straying into ground that I  
20 really don't know the answers to. I've already strayed  
21 there by saying, you know, I've heard statements of one  
22 project, and I'm not even sure what project it is. So I  
23 would really like to defer that question to the engineers  
24 that are actually reviewing them.

25 I'd be happy to try to find out.

1 BOARD MEMBER BURROUGHS: Thank you.

2 Well, considering the short timeframe we have,  
3 and all the districts that are involved, and if only one  
4 has been presented to you, it seems to me like we have a  
5 major crisis in regards to getting this request done.

6 MS. ARENA: Actually I would offer the opposite.  
7 If we have only one that has been presented to us, we have  
8 only one to look at. And therefore the staffing concerns  
9 are probably not that great.

10 SECRETARY DOHERTY: But you've got a deadline and  
11 you need them all.

12 MS. ARENA: And it may very well be that it's  
13 already been reviewed. I can't speak to that. What I'm  
14 saying to you is I'm the lawyer. I've looked at it from  
15 the legal standpoint. I can't tell you where it stands  
16 from the standpoint of engineering review. If we have  
17 only one before us and it's been submitted to us sometime  
18 ago, my guess is its review is well underway.

19 SECRETARY DOHERTY: So the rest of them will not  
20 be coming before you unless there's a problem?

21 MS. ARENA: No. What I'm saying is we're not  
22 going to look at signing a PAL agreement for organizations  
23 that haven't asked us to. They have to submit a request  
24 to us.

25 BOARD MEMBER BURROUGHS: How would they even know

1 to submit it?

2 PRESIDENT CARTER: Hold on.

3 Mr. Punia.

4 GENERAL MANAGER PUNIA: I think each local  
5 community has to request either The Rec Board or the -- I  
6 think based upon the previous information, they were  
7 supposed to request the Rec Board. And based upon later  
8 information, they have to request the DWR. And we are  
9 coordinating with DWR that somebody's going to request us.  
10 We are going to pass that information to Department of  
11 Water Resources so that they can act on this. They are  
12 compiling all this information and reviewing those  
13 documents.

14 MS. ARENA: And it's my guess, looking at the  
15 letter that was sent to The Rec Board, that FEMA -- it  
16 looks like it was sent to all entities that could be  
17 eligible for PAL. And this was back in may. So my guess  
18 is they've been on a notice and it's up to them to  
19 determine whether they want to seek this status or not.  
20 It's not up to us to follow up with them and chase them  
21 down and determine, "Do you want it?" If they've been put  
22 on notice by FEMA, it's up to them to decide if this is  
23 something they want to avail themselves or not.

24 BOARD MEMBER RIE: Well, I don't think there's  
25 anything in Memo 42, or is it 34 -- whatever one it is --

1 that says that a PAL agreement must be signed by the State  
2 of California. There's nothing in there. So I don't know  
3 how any of the reclamation districts would even know to  
4 submit anything to the State of California.

5 MS. ARENA: FEMA has contacted them and indicated  
6 to them that if they want to initiate the process, to  
7 contact them. And then, no doubt, they've walked through  
8 to the process. It's not up to us to walk them through  
9 the process of what the requirements are. But FEMA is  
10 most clear as to what the requirements are. So once they  
11 start submitting and interacting with FEMA about what the  
12 process is, FEMA lets them know. So an initial inquiry  
13 goes out from FEMA to put them on notice. And then if  
14 they're interested, they dialogue with FEMA, and FEMA  
15 tells them what the process is.

16 PRESIDENT CARTER: Thank you, Ms. Arena.

17 MR. HARTMANN: Mr. Carter.

18 PRESIDENT CARTER: No -- excuse me. There's  
19 another member of the public that we haven't heard from I  
20 would like to hear from. And this individual can go  
21 first. Mr. Peterson.

22 MR. PETERSON: Good morning. My name is Dave  
23 Peterson with Peterson, Bristad & Pivetti, Consulting  
24 Engineers. We're a consultant to the San Joaquin County,  
25 San Joaquin Area Flood Control Agency, and City of

1 Stockton. And there was a technical issue brought up  
2 earlier that I just want to set the record straight. And  
3 I don't know if it's important or not.

4 But the Calaveras River system was -- that system  
5 was designed for 100-year flood protection. And between  
6 1995 and 2000 those improvements were made. The  
7 improvements were reviewed by the Corps of Engineers and  
8 certified for 100-year flood protection by the Corps of  
9 Engineers. So that project has been modified to a  
10 hydrologic standard of the 100-year flood.

11 So if there's a nuance in The Rec Board's  
12 authority to maintain the design standard, that is now the  
13 design standard for that system.

14 PRESIDENT CARTER: Thank you.

15 MR. HARTMANN: May I speak, Mr. Carter?

16 PRESIDENT CARTER: It's up to you two, Mr.  
17 Hartmann or Mr. Churchwell.

18 MR. HARTMANN: Well, it's just going to take me a  
19 second

20 PRESIDENT CARTER: Okay. I'll hold you to that.

21 MR. HARTMANN: Okay. Thank you.

22 Mr. Peterson just told you about what I was going  
23 to say. And about the only thing I want to add to that,  
24 since we know that the Calaveras system is up to a  
25 100-year standard now not signing a PAL, State has the

1 information it needs. And this Board I think has to sign  
2 the PAL on that basis. You have what you need to say  
3 reliably to the best of your knowledge the system meets  
4 100-year standard.

5           The issue I want to take with counsel from DWR, I  
6 think you've been misinformed. It's a two-year period.  
7 And during that period you are asked to provide  
8 information to prove certification. You're not being  
9 asked to prove it now by signing a PAL. You're saying you  
10 will, and in your contract with the county, your  
11 delegation. The county doesn't providing that  
12 information. And that's Mr. Churchwell. And I'll turn it  
13 over to him.

14           MR. CHURCHWELL: Thank you. I appreciate the  
15 opportunity to address a couple of things.

16           And, you know, this PAL FEMA process is fairly  
17 complicated. And we have been of course working with FEMA  
18 and our local other stakeholders.

19           I'd first like to kind of address the maintenance  
20 issue. And we have been working with Rec Board staff  
21 regarding these maintenance issues. But they are  
22 separate. They are separate in that the maintenance  
23 issues have a one-year period to be remedied. And then  
24 that levee system can possibly then go into being  
25 disaccredited by FEMA.

1           The PAL process is a two-year process if a PAL is  
2 granted, which gives the agencies an opportunity in that  
3 two-year period to collect information to show that that  
4 levee meets FEMA criteria for accreditation. It's not a  
5 certification. The levees are already certified to  
6 provide 100-year flood protection. But it provides the  
7 information to FEMA to continue to provide and show that  
8 it meets the 100-year flood protection information for  
9 flood insurance.

10           With regards to the information pertaining to  
11 FEMA requesting PAL signatures, Mr. Punia was sent a  
12 letter from FEMA regarding that with regards to the  
13 different levees that the state has authority over --  
14 State Reclamation Board as the owner. So I think that  
15 information has already been provided, and it's not just  
16 one levee segment that requires that information or that  
17 they have -- that you have received.

18           And that's all.

19           PRESIDENT CARTER: Thank you.

20           Mr. Morgan.

21           STAFF COUNSEL MORGAN: Just one more  
22 clarification again.

23           I'm not familiar with the O&M manual for the  
24 Calaveras system. Perhaps Steve Bradley is. But there  
25 are project features that are designed and constructed to

1 achieve a certain level of flood protection, especially  
2 more recently rather than in the past. But the manuals  
3 received by the Corps of Engineers have an objective  
4 standard, a design flow, and a design water elevation,  
5 because that doesn't change with a 100-year standard. We  
6 all know it's a moving target. I'm not sure how we would  
7 operate and maintain the system if it had a moving target.

8           So the fact that the goal that may have been  
9 achieved when the system was designed was, well, we're  
10 going to build it -- this will be design flow, design  
11 elevation, so that it will pass the 100-year flow at the  
12 time that it is designed or constructed, is one thing.  
13 But the 100-year standard is not our standard. It's not  
14 the Board's standard.

15           The standard of the Board are the design flows,  
16 the design flow elevations. And one thing that would be  
17 bad for the Board I think from a liability standpoint is  
18 taking on yet a third standard that you have to contend  
19 with, which is 100-year level protection, which because  
20 it's a moving target are not so easy to meet. If that  
21 level rises that presumably -- I'd suggest you'd have to  
22 go out and now raise levees, increase protection because  
23 you promised 100-year level of protection.

24           Happily this Board -- it's not been particularly  
25 helpful to only have the two standards of design flow and

1 water surface elevation. But to the extent that we don't  
2 add additional burdens on the state in terms of saying  
3 we're now on but for yet another standard, that's probably  
4 a good thing from a liability standpoint. But, again,  
5 this -- the fact that -- FEMA can ask for whatever it  
6 wants to. Any federal agency can ask for whatever it  
7 wants to. Any state agency that feels it has the legal  
8 authority to comply with the request can give the federal  
9 agency that's asking what it wants.

10 In the case of the board, an agency that we do  
11 not have the same sort of direct dealings with that the  
12 Department historically does is asking for some  
13 information that the Board does not have. And so that's  
14 one reason why I said, "Let's" -- you know, "Let's not get  
15 involved in this. Let some other agency get involved."

16 In terms of how the federal government interprets  
17 its regulations? That's their call. If they've read the  
18 regulations and decided they needed someone to sign,  
19 that's their business. People can complain to FEMA. The  
20 Reclamation Board isn't the entity to complain to about  
21 that, because it's not our regulations, it's not our laws,  
22 it's not our call.

23 PRESIDENT CARTER: Thank you.

24 BOARD MEMBER RIE: I just want to comment on what  
25 Scott Morgan said.

1           The Board's jurisdiction is not limited to the  
2 100-year flood or something less than the 100-year flood,  
3 you're right. It's the design flood. And we have many  
4 levees that are at the 100-year, the 200-year -- they're  
5 in all sorts of different frequencies. And the Board has  
6 additional authority under the regulations. When we have  
7 urban development or residential development behind  
8 levees, we can ask for more. So --

9           STAFF COUNSEL MORGAN: Sure. But, again, the  
10 relationship is with the Corps of Engineers. Our projects  
11 have been designed to an objective standard of a flow and  
12 water surface elevation.

13           Again, when you design a project, if you say to  
14 the project designers, "We want you to make sure that it  
15 will pass what's a 200-year event today," that won't be  
16 the 200-year event in 10 years or 20 years necessarily  
17 because the hydraulics will change. What won't change  
18 will be the operating parameters of the system. And  
19 that's, if anything, what the Board could be certifying  
20 too if it had information available. And it sounds as  
21 though the concerns about the Department staff, the  
22 Department has much more staff than the Board does to be  
23 looking for that. It has many more people out there  
24 actually doing investigations. So this would be something  
25 that's really beyond what -- and it's with an agency we're

1 not normally dealing with, asking questions we don't  
2 directly have the answers to.

3 BOARD MEMBER RIE: And if I could comment on  
4 that.

5 It's actually the Department of Water Resources  
6 that does the levee inspections on behalf of the  
7 Reclamation Board. And if I could also add, that that \$35  
8 million contract that DWR has with URS to do the soil  
9 borings, that is a Rec Board contract.

10 Thank you.

11 PRESIDENT CARTER: Very good.

12 What I would suggest at this point is that the  
13 Board let this issue muddle through the day. When we  
14 discuss our future agenda, we can decide at that point  
15 whether or we want to hold a special meeting to make a  
16 decision on this issue. So I would suggest that we try to  
17 move on.

18 BOARD MEMBER BURROUGHS: Is it time for a break?

19 PRESIDENT CARTER: It's actually the time for our  
20 lunch recess. So we will -- we bypassed the break, and we  
21 will take a one-hour recess.

22 We'll be back here at 10 of 1 to continue with  
23 Item 8 on our agenda.

24 Thank you.

25 (Thereupon a lunch break was taken.)



1 permit update, that you have in front of you that I think  
2 Lorraine passed out during lunch time. So you should have  
3 that in front of you there to show you what is happening  
4 with the building permits.

5           If you have the monthly report, the item I'd like  
6 to direct you to is Item 2d, page 2, of our monthly. It  
7 deals with the Feather River, Phase 4, segments 1, 2, and  
8 3 and then that portion of our report we are giving you an  
9 update on those three segments, particularly the funding  
10 for Prop 1E and 84 that we submitted our application for.  
11 And just like all of the other applicants, we are still  
12 waiting for the state to provide their feedback on the  
13 applications that we submitted. Continually get positive  
14 feedback that it's any day now.

15           The most recent feedback that we have is that  
16 it's tied to the budget. And when I woke up this morning  
17 I heard that there's some budget movement going on. So  
18 hopefully the budget gets done and we get that letter to  
19 come in to us on it to move forward.

20           It is having some ripple effects to us on our  
21 projects because it is a large amount of money for our  
22 project to go through, and we're doing our best to  
23 accommodate that to stay on schedule.

24           So that's the update on that portion I'd like to  
25 give.

1           If you move down to just below that, on page 3 we  
2 go to segments 1 & 3. And on that particular area, the  
3 update for that section, we went through a long discussion  
4 about indemnity last time. We're not here to argue that.  
5 In fact, all three entities, RD 784, the county and Three  
6 Rivers signed the agreement. And so that was executed and  
7 we're moving forward on that. So we've heard what was  
8 said and we signed it. And that's done.

9           We did go ahead last Tuesday, just a few days  
10 ago, do the partial award for the project. We have a long  
11 lead item. This is on segment 3 in particular, but also  
12 the mixed design for the slurry walls.

13           We did the partial award for a couple reasons. A  
14 lot of the funding issues really keyed around with the  
15 state's amount, who gives what to us. We're still working  
16 through the 408 permit. We do not have the 408 permit in  
17 a couple of your items. Hopefully you'll get to that  
18 today. Item No. 11 on your agenda, you talk about the  
19 acceleration of the 408 permit and what could be done on  
20 that. Hopefully you're very successful on that. We've  
21 actually briefed several entities ourselves about doing  
22 that. A new wrinkle on slurry wall, a construction  
23 project that we're working through. We did submit for the  
24 408, but we do not have it yet. So that will be a  
25 trigger.

1           The state's letter of commitment will be a  
2 trigger for us also as we move forward. But we're  
3 positioning ourselves for a war, at least on segment 3, to  
4 move forward and make progress on that.

5           One caution on that for us at least is that the  
6 longer and longer we wait for things like 408 permits and  
7 that, the construction season's going by the wayside. And  
8 that's a concern for us. And we keep on introducing all  
9 these different wrinkles into the project, new  
10 requirements. And we potentially may lose the  
11 construction season. And I think that should be a concern  
12 for us all.

13           You move a little bit down on page 3, segment 2,  
14 the item on that that I'd like to point out is that we --  
15 we were going to come at this time and do the encroachment  
16 permit. We ended up not doing that, postponing that to at  
17 least August. Our schedule that we go through, we were  
18 still hoping to hit the August timeframe for that. I know  
19 there's discussion that has gone on between, I know, at  
20 least Jay and myself about whether that's viable or not.

21           We're going to be turning in construction  
22 drawings on 27 July, going through and working through  
23 with the boards and the Corps to get comments on a very  
24 aggressive schedule. We have a 10 August meeting where we  
25 will be meeting with our board of senior consultants.

1 We've invited the Corps, we've invited DWR to come and  
2 participate. That should work through a lot of  
3 construction issues, the details on what we're doing on  
4 the project to get things in. We've submitted updates to  
5 the DWR on our alignments and why, and what the soils  
6 information is to get their input.

7           And we were looking towards the August meeting to  
8 be the time that we'd come back during that time of  
9 discussing the encroachment permit with you, sharing where  
10 we are, and other people's input on the project.

11           I know that there is some discussion whether or  
12 not if all that can happen in that time period, and  
13 potentially the September timeframe was being talked  
14 about. And, Jay, I'll let you speak to that in a second.

15           If we end up postponing the encroachment permit  
16 discussion till September, we really do need to have a  
17 time period from you all of a commitment to doing  
18 something in that time, because we need the encroachment  
19 permit to start our construction. We do plan on really  
20 keep on going. If the window comes in with the  
21 opportunity from the Prop 1E funds coming in to move  
22 forward, and we expect that to happen in good faith,  
23 the -- we assemble our local share, turn that in, go  
24 through all that, we still have hopes and plans of  
25 awarding this contract for segment 2 in late September and

1 starting very soon thereafter. And we're still trying  
2 to -- 2008 time period. But we're really getting very  
3 close not being able to do that on the construction  
4 schedule.

5 So with that I'm going to pause. And that's  
6 really the end of my updates of all the items I wanted to  
7 speak to you about this morning on the report. I can go  
8 through and answer questions.

9 Jay, you may want to speak to the encroachment  
10 permit.

11 GENERAL MANAGER PUNIA: As the Board -- Jay  
12 Punia, General Manager.

13 The phase 2 levee setback, originally we were  
14 planning to bring it to the Board August meeting. And  
15 based upon the input I received from the staff during our  
16 staff meeting, all the pieces are not there at this time  
17 so that we can bring it in August. But in subsequent  
18 discussion with Mr. Paul Brunner and Ric Reinhardt, we are  
19 revisiting that decision, and we will be meeting with Rec  
20 Board staff and Paul and Ric to make a decision whether we  
21 are ready for the August meeting or we have to postpone  
22 the segment, setback levee permit, to the September  
23 meeting.

24 MR. BRUNNER: Okay. So what you're -- what I  
25 heard you just say, Jay, is that you're still open to the

1 August meeting if we can make that happen.

2           GENERAL MANAGER PUNIA: Yes. Based upon the new  
3 information, Ric's talks and your talk, we will be  
4 revisiting that subject with Dan Fua and Steve Bradley to  
5 see if we can bring it during the August. Otherwise we  
6 have postponed it to the September meeting.

7           MR. BRUNNER: We're okay with that. We are -- I  
8 think the August 10th Board -- the Senior Board of  
9 Consultants where we bring all the parties together and  
10 gather comments will be really a decision point for us.  
11 The key is that we can turn in the reports to the Rec  
12 Board in time for your review before we have that  
13 encroachment permit discussion. And I know Jay's looking  
14 forward to that very much too.

15           Any particular questions on our report?

16           SECRETARY DOHERTY: I have a question.

17           From the very beginning we've been told that  
18 TRLIA has been setting aside money for levees and  
19 improvements and so forth and so on. Is this money held  
20 in an escrow account?

21           MR. BRUNNER: The setting aside monies? We do  
22 have monies coming in from the state. We do have monies  
23 coming in from development communities that have supported  
24 us in capital calls that go into escrow accounts that are  
25 used as we need them.

1           SECRETARY DOHERTY: That's -- the latter that you  
2 referred to is what I was referring to. So the money is  
3 coming in on a regular basis as it's called for?

4           MR. BRUNNER: The money has been coming in on the  
5 capital calls that we've established to make the program  
6 sufficient for funding.

7           SECRETARY DOHERTY: Okay. My next question  
8 refers to page 1. The crossings, pipes and various other  
9 things that have been going into the levees. Are they  
10 numerous?

11          MR. BRUNNER: There's about 40 of them.

12          SECRETARY DOHERTY: Forty. Have the rules and  
13 regulations changed? Are you going to have to change all  
14 of these?

15          MR. BRUNNER: Well, we did each go through a -- I  
16 think there's a report that we have on the utility  
17 crossings spells out a couple items like putting up marker  
18 signs and that. The Corps discussion has been that we're  
19 a little hesitant to work through this, so we're kind of  
20 groping through this process with the Corps going in and  
21 digging into the levees to find the existing levee -- or  
22 the utilities to make sure they're in good integrity. We  
23 think there's concerns about doing that. You might hit  
24 the utility, you might break it depending upon what it is,  
25 cause it to --

1           SECRETARY DOHERTY: So at the present time  
2 they're not marked?

3           MR. BRUNNER: Not all. I think over times when  
4 the utilities have been placed, on occasion we found that  
5 they're not all marked.

6           Ric, did you have anything to add?

7           MR. REINHARDT: The primary issue is these  
8 facilities when they were installed, they were permitted.  
9 And the primary question is: Do they meet current  
10 engineering standards for penetration through levees? And  
11 we're going to get into -- we've gotten kind of into a  
12 difficult area where, what happens if they don't? They're  
13 permitted. And is The Reclamation Board as the permittee  
14 going to go back and require them to come into compliance  
15 or not, so that they're working through staff? We've had  
16 a great deal of support from your staff in writing letters  
17 to these utilities, and we're requesting information on  
18 how they were constructed. And we have not reached a  
19 conclusion as to whether any of them are problematic yet.  
20 But if they are, then we will need to come back with your  
21 staff and talk about how we bring them into compliance.

22           SECRETARY DOHERTY: Okay. Thank you, Ric.

23           MR. BRUNNER: I don't think we are alone in  
24 utility crossings. And as we work through this, you'll  
25 face this issue with many other levees.

1           SECRETARY DOHERTY: And on page 2 at the top of  
2 the page, paragraph 3 -- well it's No. 3, "...working with  
3 landowner on right of entry for this work and seeking  
4 environmental clearances from the resource agencies."

5           How much time is required?

6           MR. BRUNNER: How much time is required to do the  
7 work?

8           SECRETARY DOHERTY: To accomplish this. To get  
9 the approvals and to get in and --

10          MR. BRUNNER: It's actually a very tenuous  
11 discussion that we have with a particular landowner as we  
12 work back and forth with this one on it. There are  
13 easement issues there that we need to continue to work  
14 with her about that. We've had at least one meeting with  
15 her about another issue on the levees. We didn't really  
16 come to a total agreement. This one will continue on with  
17 discussion about how do we finally figure out how to use  
18 the easements and get out to solve this problem that we  
19 have.

20          PRESIDENT CARTER: Any other questions for Mr.  
21 Brunner?

22          VICE-PRESIDENT HODGKINS: Based on -- I know you  
23 can't say for sure that you have funding. But you've had  
24 some discussions, you have some idea of what DWR is  
25 thinking. Are we going to find when they make their

1 announcement that the amount that they have allocated for  
2 your project is significantly less than you've requested,  
3 in which case we're all going to be wondering how we're  
4 going to take care of the shortfall?

5 MR. BRUNNER: The money that we requested -- we  
6 requested an ambitious amount of \$200 million for the Prop  
7 1E funding source. Indications are that we'll receive a  
8 significant portion of that. Your question that -- it's  
9 overasked.

10 There's several things that go into that. We do  
11 need to factor in, and we're working very aggressively  
12 with our partners, the development community, the county,  
13 to make sure that we have that covered.

14 There's other concerns besides the gap that we  
15 need to work with the state when we get the request. We  
16 have real estate acquisition. We made it clear in our  
17 application that we must be able to have direct  
18 disbursement, not a reimbursable thing. I mean we have  
19 like \$60,000,000 in our application for land acquisition,  
20 of which we could not waiver reimbursement. So there's  
21 issues like that.

22 There's -- we think there's creative ways that we  
23 could do construction projects that we'll have to work  
24 through. So we are aggressively trying to figure out what  
25 is the request, or what's the letter going to be from the

1 state to give us the money? What are those terms and  
2 conditions? What are the local share? What does it  
3 really turn out? What are the conditions of the local  
4 share, and how can we respond to it? It may take other  
5 things that we currently don't have to meet those needs  
6 that we are trying to game and plan to do. What is that.

7           Once we get the letter, I think we'll have a much  
8 better way of replying back to you, we have a gap or don't  
9 we, or how to do it. Right now we don't have it all  
10 worked out. We don't have the letter.

11           VICE-PRESIDENT HODGKINS: Thank you.

12           PRESIDENT CARTER: Any other questions for Mr.  
13 Brunner?

14           Thank you very much.

15           MR. BRUNNER: Thank you.

16           PRESIDENT CARTER: A couple people that wanted to  
17 address the Board on this particular item.

18           Mr. Rice.

19           MR. RICE: Thomas Rice, owner of the Rice River  
20 Ranch. I will try to be concise today.

21           There's still only one main issue which I  
22 continue to ask to be addressed. And this is of course  
23 what I perceive as a continued disinterest of TRLIA in  
24 actively working to find a more suitable and less  
25 destructive path for the levee line, one which works

1 better to preserve the valuable community, including  
2 family farms, that they are supposed to be protecting.

3           At the last few Reclamation Board meetings, which  
4 I was in attendance, we have requested both in  
5 presentation and in writing that TRLIA conduct additional  
6 nearby tests, nearby -- parcel, to actively work to find a  
7 less destructive path. I do believe that the Board  
8 concurs that this would be a reasonable and prudent  
9 measure, one which would not unduly burden TRLIA. And  
10 just to be clear here, the purpose of these tests is not  
11 to find the ideal path with the cheapest solutions, but to  
12 validate that indeed an alternative is available, that  
13 it's less destructive, feasible, and practical. And Rice  
14 River Ranch even submitted in writing to the Board the  
15 suggested alternative test sites to help validate this  
16 idea.

17           Yes, to the best of my knowledge, no such added  
18 tests have been done. Or if they have, I've received no  
19 information or feedback to that effect. In fact, I've  
20 never received a single report from any of the tests that  
21 have been done on or near my property. This is even  
22 though my right of access agreement with TRLIA and with  
23 their agents clearly requires such reports be provided to  
24 me at the same time that they were provided to TRLIA and  
25 to their agents. We remind them of this each and every

1 time they schedule or arrive to perform a test.

2           In the meantime, TRLIA as done another round of  
3 testing on their property. This is the fourth drilling  
4 they have done in a 600-foot width.

5           At the time that test was scheduled, which June  
6 24th was the scheduling, and also during the test, we  
7 asked that GEI Geologist John Dahl if he knew whether the  
8 requested extra tests had been or would be done? We  
9 emphasized that if they had not, this would be the most  
10 opportune time because they would already have the drill  
11 rig immediately adjacent to the suggested test area. His  
12 answer was that he did not know and that he was -- and I  
13 quote -- "too far down the chain."

14           These things were surprising to me, because I  
15 would hope that their geologist would be one to both know  
16 and indeed recommend possible locations of such tests.  
17 But that was apparently not the case.

18           Ladies and gentlemen, from my perception I have  
19 not seen any changes in the behaviors or attitude of TRLIA  
20 or its agents. And they continue to appear to be missing  
21 every opportunity, request, directive, or other  
22 opportunity to find a better solution. We are willing to  
23 work with them on this to find a way that is less  
24 destructive to the community and the family farms.

25           And all the proceeds while their financial and

1 scheduled situation continues to worsen, as we have just  
2 seen.

3           The timeline excuse I believe does not hold any  
4 longer. We must realistically acknowledge that the  
5 problems are now surpassing the benefits of proceeding  
6 without reasonable changes. We can and should be looking  
7 at a better and less destructive solution.

8           I would again politely ask the Board in its  
9 actions and its directions to staff to help steer TRLIA  
10 toward a more constructive and appropriate approach,  
11 partnering and solution, and to not permit this  
12 unnecessary destruction to continue to occur.

13           I thank you for your time and consideration and  
14 will be glad to take any questions.

15           PRESIDENT CARTER: Any questions for Mr. Rice?

16           BOARD MEMBER RIE: I have a question for staff.

17           Can someone get Mr. Rice a copy of those borings?

18           SUPERVISING ENGINEER FUA: We don't have a copy  
19 of those borings. That's TRLIA.

20           SECRETARY DOHERTY: Well, could TRLIA tell us why  
21 they haven't gotten a copy?

22           MR. SHAPIRO: The geotechnical report, which  
23 actually summarizes the results --

24           PRESIDENT CARTER: Mr. Shapiro, could you  
25 introduce yourself for the record please.

1 MR. SHAPIRO: I can. Thank you.

2 Scott Shapiro, counsel for Three Rivers Levee  
3 Improvement Authority.

4 The geotechnical report, which will summarize the  
5 results of the borings, has not been finalized yet. It's  
6 still in draft.

7 MR. REINHARDT: It hasn't even released yet.

8 PRESIDENT CARTER: But --

9 MR. SHAPIRO: It hasn't gone to the Three Rivers  
10 Board.

11 PRESIDENT CARTER: If what Mr. Rice says is true,  
12 that you agreed to give him copies of borings as they were  
13 received by you, that would be giving him the raw data for  
14 the borings on his property. Isn't that a reasonable  
15 request? And why hasn't that been done?

16 MR. SHAPIRO: That's fine. We're happy to.  
17 We'll transmit it next week.

18 PRESIDENT CARTER: Okay. Very good. Thank you.

19 Mr. Foley.

20 MR. FOLEY: Good afternoon, Board. Thank you.

21 I brought this up some time before, but I don't  
22 understand how it all works. But what we have before us  
23 that seems to be happening is that that Feather River  
24 section, they have to go through another winter there  
25 without that being repaired. And at least since 1E passed

1 there should have been immediate action upon the state's  
2 part, I think, if it's possible to take that process over  
3 and don't put people through another winter, if at all  
4 possible. That Feather River has boils -- known boils,  
5 known deficiencies. It breaks, that's another Paterno.

6 I don't understand why the state continues with  
7 all this. The state has allowed this process to -- in  
8 essence, if they do nothing about it, they're allowing  
9 this risk to continue -- tremendous Paterno risk, not to  
10 mention lives. And even without money -- wanting money,  
11 the Paterno decision was that the state had the fiscal  
12 resources and the fiscal responsibility to have those  
13 levees maintained. The state owns those levees. So I do  
14 not understand why this keeps going on if there's anything  
15 to be done about it. You know, if the Rec Board doesn't  
16 understand that -- or doesn't act on that, I don't know  
17 who would know better -- who would understand the  
18 situation better than The Rec Board.

19 You see how it's played out. Three Rivers is not  
20 going to get anything done this year. And they have no  
21 idea when they're going to get it done. And it is a state  
22 project levee. So I don't understand that as far as why  
23 the state deals through a local agency on a state project  
24 levee, and while time passes the levee breaks -- that  
25 levee has boils. It's like an incredible gamble that the

1 state continues to make that something good can happen  
2 while this time passes and nothing bad is going to happen.  
3 And the Paterno was pretty clear about the state's  
4 responsibility and liability.

5 Thank you.

6 PRESIDENT CARTER: Thank you.

7 If there's nothing else on this item, we'll move  
8 on.

9 We're on to Item 10, Project or Study Agreements.

10 This is the Folsom Dam and Flood Damage Reduction  
11 Joint Federal Project.

12 STAFF COUNSEL MORGAN: President Carter, I was  
13 reminded Ms. Lani Arena is available for a few minutes if  
14 the Board has any questions pertaining to the PAL  
15 agreements.

16 PRESIDENT CARTER: Okay. That's fine.

17 Ms. Rie, you had asked Ms. Arena to get back to  
18 us this afternoon with the appropriate citations for that.

19 Ms. Arena, do you have that information?

20 MS. ARENA: I do indeed.

21 BOARD MEMBER RIE: Could we have that later or --

22 PRESIDENT CARTER: I think --

23 MS. ARENA: No, I'm not available later.

24 BOARD MEMBER RIE: Okay, fine.

25 MS. ARENA: I can come back on another day.

1 BOARD MEMBER RIE: Go ahead.

2 MS. ARENA: Okay. I've got three bits of  
3 information to give you.

4 One, the citations are another clarification on  
5 the one year versus the two year.

6 And another is the information about outstanding  
7 applications, what I was able to find out about it.

8 First, with respect to the authorities, we've  
9 looked at this matter and determined that DWR has  
10 authority under Water Code 8326 -- I'll just give you the  
11 citations and then I will go through the specifics of  
12 it -- 8326, 8360 -- looks like I've lost my flag on the  
13 other one -- and 12580.

14 8326 has to do with the state's cooperation under  
15 the National Flood Insurance Program. 8360 has to do with  
16 the State's power to -- supervisory powers over  
17 maintenance and operation of flood control works on the  
18 Sacramento River flood control. And then 12580 has to do  
19 with our power to study and coordinate all water  
20 development projects including flood control projects  
21 undertaken by counties, cities, state agencies, public  
22 districts, United States, any of its departments or  
23 agencies, et cetera, et cetera. So it has to do with our  
24 authority to study and coordinate for water development  
25 projects.

1           So those are the three Water Code provisions that  
2 we have concluded give the Department of Water Resources  
3 authority to sign the PAL agreements.

4           As far as clarification on the one year versus  
5 the two year, I apologize for the fact I didn't have my  
6 file with me at the time this morning.

7           The one year is the time period that the Corps  
8 has issued to permit correction of deficiencies. That  
9 apparently expires on March 30th, 2008.

10           The two years for PAL certification, providing  
11 that documentation, it appears expires -- commences at the  
12 end of the one year, and it expires on March 30th, 2010.

13           So one year to correct, followed by the two years  
14 to provide your documents.

15           And then in terms of pending applications, all I  
16 was able to find out is with respect to the one that I'm  
17 aware of that involved the levees in Lathrop. And we've  
18 already looked at them and sent a letter to the applicant  
19 indicating that they do -- we have determined that they do  
20 not meet the 100-year flood protection level. That letter  
21 went out on June the 19th.

22           I was unable to determine whether we have any  
23 other applications pending in the last hour or so.

24           BOARD MEMBER RIE: Okay. With respect to Water  
25 Code 8326, that gives you the right to review and comment.

1 There's no authority to actually enter into a contract  
2 with FEMA.

3           And with respect to 8360, that refers to 8361,  
4 which gives DWR jurisdiction over specific projects on the  
5 Sacramento River. There's nothing in here on the San  
6 Joaquin.

7           MS. ARENA: On 8360 -- I gave you 8360. And  
8 it -- we have supervisory powers. And I absolutely  
9 acknowledged that it is limited to the Sacramento River  
10 Flood Control Project. So we have determined that a  
11 reasonable legal interpretation would include that,  
12 although it is limited under this provision to the  
13 Sacramento River Flood Control Project.

14           We have also determined that our duties in  
15 connection with our cooperation under the National Flood  
16 Insurance Program would include execution of these  
17 agreements, as this is something that has been requested  
18 by FEMA in connection with our participation in that  
19 program.

20           And then to the extent there's any gap in that  
21 authority because we have the supervisory powers being  
22 limited to Sacramento River Flood Control Project under  
23 8360, we are able to fall back on Water Code 12580.

24           We're quite confident of our ability and  
25 authority to sign these agreements.

1           BOARD MEMBER RIE: I'm not sure if I agree with  
2 that.

3           There's another Water Code Section, 8689, it says  
4 the Department cannot enter into a contract without  
5 permission of the Reclamation Board.

6           MS. ARENA: We're being asked to provide an  
7 indication of whether a particular levee reaches a  
8 100-year flood protection level. We are not signing a  
9 contract.

10          BOARD MEMBER RIE: I thought it was an agreement  
11 that you were signing. And in the agreement the state  
12 agrees to provide the information to FEMA.

13          MS. ARENA: Actually what I thought I had  
14 explained, and perhaps I wasn't clear, is that we have  
15 worked out with FEMA that we would customize the agreement  
16 because the state is not going to provide any information.  
17 All the state is willing to do is to certify the level of  
18 flood protection. It is not the state's responsibility to  
19 provide any of that information.

20          So as the agreement was originally conceived by  
21 FEMA, they had a master agreement that had everybody's  
22 responsibilities in one document. But when we sat down  
23 and we talked with FEMA and we said, "What is it you  
24 actually need from the state?" they said, "Certification  
25 as to a hundred year." And we said, "Well, we're going to

1 be gathering all of this documentation and providing it.  
2 We can't sign this form the way it is." And they agreed  
3 to allow us to customize it. We're in the process of  
4 working out the language on that. And it will simply  
5 certify it's a hundred year protection.

6 BOARD MEMBER RIE: Well, I'm not sure why we're  
7 customizing an agreement for DWR to certify the levees as  
8 meeting the 100-year level of flood protection when nobody  
9 else in the entire country is being asked to do that. The  
10 purpose of the PAL is to give the local agencies two years  
11 to gather the data and provide it to FEMA.

12 MS. ARENA: We're doing it because that's what  
13 FEMA is authorized to request, that's what FEMA wants.  
14 And FEMA is administering this program under regulations  
15 that govern a federal agency. So it's not -- the bottom  
16 line is the State of California cannot sign that agreement  
17 in its present form because the State of California has no  
18 intention of providing the information and fulfilling the  
19 duties that are listed there that are to be fulfilled by  
20 the local reclamation districts.

21 So it absolutely -- if legal counsel -- I would  
22 and have counseled DWR that they cannot sign it in its  
23 present form. I believe I speak accurately for Mr.  
24 Morgan, who -- before we got to the issue of whether we  
25 were certifying to design versus level of flood

1 protection, the same conclusion -- he reached the same  
2 conclusion with respect to the Rec Board.

3           We are not providing that documentation. It  
4 simply would not be possible for the State of California  
5 to sign that document in its present form, which is why we  
6 entered into a dialogue with FEMA and determined that  
7 that's not what they need.

8           And please recall that this morning I mentioned  
9 that the federal regulations don't specifically say that  
10 they have to get anything in particular from the state.  
11 It really gives them the discretion to determine what it  
12 is that they need from the state.

13           BOARD MEMBER RIE: Okay. So they go from  
14 jurisdiction to jurisdiction and state to state and ask  
15 for something completely different every time, then we're  
16 now customizing agreements?

17           MS. ARENA: I would tend to doubt that that's the  
18 case, because they had to go up to headquarters to get  
19 permission to customize this and to clarify that what they  
20 really need from us is the 100-year certification. And if  
21 other states are willing to sign an agreement because  
22 their counsel don't look at it as closely as we have, I  
23 can't speak to that.

24           But if in another state a lawyer looks at it as  
25 closely as we have, they'll be asking the same questions.

1 And since headquarters -- FEMA headquarters has agreed to  
2 this in concept, and ultimately would be agreeing to the  
3 specific language, I wouldn't be surprised if the same  
4 format gets adopted to any state that wants to -- that  
5 balks at the idea of signing the generalized agreement  
6 that really includes obligations that they have no  
7 intention of fulfilling.

8 BOARD MEMBER RIE: I've heard enough.

9 PRESIDENT CARTER: Yeah. I think what we need to  
10 do is again we'll decide what we want to do going forward  
11 when we discuss our future agenda later on today.

12 Thank you very much, Ms. Arena.

13 MS. ARENA: Thank you.

14 PRESIDENT CARTER: Moving on to Item 10.

15 Mr. Charney. Good afternoon.

16 (Thereupon an overhead presentation was  
17 Presented as follows.)

18 MR. CHARNEY: Good afternoon.

19 Get myself set up here.

20 Good afternoon, Mr. Chairman and members of the  
21 Board, General Manager Punia, ladies and gentlemen. Thank  
22 you for your time. My name is Robert Charney. I work in  
23 the Project Development Branch for The Reclamation Board  
24 and DWR. And my role is to be the project manager for the  
25 suite of projects out at Folsom Dam.



1 local objectives for the dam.

2 A joint record of decision was signed by the  
3 Reclamation -- the Bureau of Reclamation and the Corps on  
4 May 7th.

5 --o0o--

6 MR. CHARNEY: I'm going to pause for a moment and  
7 share with you some work that is not yet moving forward.

8 The raise -- the 3 1/2 foot dam raise out at  
9 Folsom and replacement of three emergency gates is still  
10 in the approved project, but has not yet been fully vetted  
11 by all the partners. And the Federal Record of Decision  
12 is not yet signed for this work. So we're not today  
13 asking the Board to approve this work or the mitigation  
14 efforts for this work.

15 --o0o--

16 MR. CHARNEY: What is ready to go is considered a  
17 functional equivalent of the Folsom Dam Modifications  
18 Project. That's an auxiliary spillway, structurally six  
19 submerged tainter gates, approach channel, and stilling  
20 basin. And that's the Record of Decision that I  
21 mentioned.

22 We now refer to this as the Folsom Joint Federal  
23 Project.

24 --o0o--

25 MR. CHARNEY: Some quick stats information, if

1 you will, on the project. It's estimated to cost 847  
2 million, the non-federal cost of 239 million. Modeling  
3 and design efforts for the work are expected to continue  
4 for the next two to three years. In the meantime the  
5 Bureau of Reclamation will begin construction and will  
6 begin excavation of this spillway. They can do that  
7 basically because they are mandated to provide additional  
8 dam safety work out at Folsom. And even if our  
9 partnership were to break down, they would be constructing  
10 a spillway. So that's why they are ahead of us.

11           Nonetheless, the Bureau of Reclamation and the  
12 Corps and the state and local partners are working  
13 together well because we all want to see the joint federal  
14 project as its been conceived go forward.

15                               --o0o--

16           MR. CHARNEY: A quick look at the spillway  
17 layout. It's a very impressive project when you look at  
18 the size compared to the concrete dam. You can see that  
19 this is a historic undertaking.

20                               --o0o--

21           MR. CHARNEY: An artist's rendering of what the  
22 spillway will look like and the control structure, along  
23 with the new Folsom bridge and roadway when it's  
24 completed.

25           Some new information.

1                                   --o0o--

2                   MR. CHARNEY:  The Corps has physical models  
3 underway.  This is a model from Utah State, basically of  
4 the control structure.  Using this model, they are  
5 modifying the approach channels, they're modifying the  
6 piers, et cetera, such that the structure will be  
7 hydraulically stable.  It's very fascinating work.

8                   They have four physical models underway.  This is  
9 the first one that has been wetted, as they say.  Actually  
10 they're using it to make decisions now.  It's fun stuff.

11                                   --o0o--

12                   MR. CHARNEY:  Bureau of Reclamation is also, as I  
13 said, moving forward.  They have received bids for the  
14 first contract for an excavation of the spillway.  
15 That's -- Notice to Proceed is estimated -- it's expected  
16 to occur in November.  They estimate 500 to 600,000 cubic  
17 yards of material will be excavated.

18                   That will be followed by a second excavation  
19 contract; followed by excavation and construction  
20 contracts of the gates, et cetera, et cetera.  The exact  
21 sequencing is still being worked out.  But we do know we  
22 can start digging the big hole that needs to be dug out  
23 there.

24                                   --o0o--

25                   MR. CHARNEY:  We'll pause for a minute now and

1 step back and discuss the scope of the EIS/EIR that was  
2 sent to you a couple of months ago and that we discussed  
3 last month.

4 --o0o--

5 MR. CHARNEY: The EIS/EIR covers a great deal of  
6 work, work by multiple agencies, multiple federal  
7 agencies. Not all of that work falls under the  
8 jurisdiction of The Reclamation Board. For example,  
9 there's security work that Bureau of Reclamation is  
10 conducting on their own that's covered in that document.

11 Furthermore, re-operation of Folsom Dam, a plan  
12 for that still has to be developed. And that will have  
13 its own separate environmental document.

14 --o0o--

15 MR. CHARNEY: Let me go over real quickly what is  
16 in the EIS/EIR. I'm going to show you everything that's  
17 in and then I'm going to subtract out, such that you have  
18 a very clear view, I hope, of what the Board will be  
19 approving if they agree with our request.

20 Both the Corps and the Bureau of Reclamation have  
21 identified the spillway, tainter gates, stilling basin,  
22 and approach channel in their separate plans for the  
23 Folsom facilities.

24 The Corps has identified in their approved plan a  
25 3 1/2 foot dam raise, emergency gate replacement. The



1 and get the ROD signed immediately even though we  
2 anticipate resources won't be available until we're quite  
3 a bit further along in development of the spillway  
4 basin -- or the spillway.

5           The other train of thought is since we know we  
6 won't be constructing the raise until we're quite a ways  
7 along with the spillway, that we should wait and sign the  
8 ROD at that time.

9           And neither of those trains of thought have  
10 dominated yet with the partners. Discussions are ongoing.

11           Does that give you sense for the two current  
12 trains of thought?

13           PRESIDENT CARTER: It gives me a sense of the two  
14 trains of thought, but it doesn't give me any sense for  
15 timing.

16           MR. CHARNEY: Well, that's because I don't  
17 have -- I'm not certain. I'm definitely not certain. I  
18 hear certain members of the Corps and Reclamation say, "We  
19 would like to get that ROD signed immediately," and then I  
20 hear other factions saying, "Well, since we're not going  
21 to be constructing it for some time, we would just as soon  
22 not pursue the design and the planning effort until we've  
23 moved further along with the spillway construction."

24           So I don't have a satisfactory answer for you. I  
25 don't have one for myself either.



1 and they would take responsibility for environmental  
2 mitigation for the project. The Corps is taking  
3 responsibility for the more structural elements, the six  
4 submerged tainter gates structure, the lining of the  
5 spillway, the approach channel and the stilling basins.

6 I would call your attention to the fact that the  
7 Bureau of Reclamation is doing environmental mitigation  
8 and we are considering EIS/EIR. Annalena will step up  
9 here in a few moments. But my understanding is that CEQA  
10 allows another agency to take on that responsibility.

11 --o0o--

12 MR. CHARNEY: So just to reiterate, we're asking  
13 the Board to certify the document for only that project  
14 work that I've identified and that is in your package.  
15 And mitigation will be done by the U.S. Bureau of  
16 Reclamation.

17 --o0o--

18 MR. CHARNEY: Annalena, would you step up.

19 MS. BRONSON: Good afternoon, Mr. President,  
20 members of the Board, Mr. Punia. My name is Annalena  
21 Bronson and I'm the environmental scientist assigned to  
22 this project.

23 And I'm here today to ask -- call your attention  
24 to Resolution 07-03. And as part of that process I am  
25 going to ask you to approve a number of things.

1           First, I'm going to request that you certify that  
2 the Folsom Dam Safety and Flood Damage Reduction Final  
3 Environmental Impact Statement/Environmental Impact Report  
4 was prepared according CEQA.

5           I further request that the Board approve the  
6 Mitigation Monitoring Plan identified in the checklist  
7 that is included in the Board's information packet. That  
8 checklist was prepared for the Bureau and the Corps's  
9 Records of Decisions. It includes everything. We have  
10 gone through and highlighted in the different colors those  
11 items that pertain to the aspects of the project that  
12 you're approving.

13           I also request that the you approve the Statement  
14 of Overriding Considerations that are included in the  
15 information packet.

16           The documents in themselves did not go into  
17 detail about levels of significance.

18           We have determined that there could potentially  
19 be significant impacts to air quality and traffic and  
20 visual resources from this project. The document states  
21 that all regulations will be complied with. But  
22 considering that this is such a long-term project, the  
23 regulations change, conditions change. And also  
24 considering that that there much smaller scale projects  
25 that also concluded that we complied with all regulations,

1 the Mayhew levee project nevertheless had overriding  
2 considerations on traffic and air quality. This has been  
3 included for this project.

4           So I request that the Board make a finding that  
5 the environmental impacts of this project within the  
6 Board's jurisdiction have been mitigated or avoided as a  
7 result of the proposed changes, alterations, and  
8 mitigation measures.

9           And that the impacts within the jurisdiction of  
10 the Board that have not been mitigated or avoided is  
11 identified in the Statement of the Overriding  
12 Considerations and that make it infeasible to mitigate or  
13 avoid these impacts.

14           And I request that the Board approve the  
15 selection of the Alternative 3 in the EIR for the Joint  
16 Federal Project. This is the Gated Auxiliary Spillway  
17 with a potential for a 3 1/2 foot parapet wall raise.

18           And, finally, I request that the Board approve  
19 the Joint Federal Project.

20           SECRETARY DOHERTY: Do you need this approved as  
21 one item or as separate items?

22           MS. BRONSON: There is a resolution that you  
23 would approve that would include all this. And there's  
24 also a Notice of Determination that I hope to be signed  
25 today that should be included in the items that need to be

1 signed. And that would take out -- take into  
2 consideration all these items.

3 SECRETARY DOHERTY: I must say I was overwhelmed  
4 with the information that we received and amazed at all  
5 the collaboration and cooperation that had to go on to  
6 achieve this project. It was tremendous.

7 I still couldn't find out what a tainter gate  
8 was. And I'm sure some engineer here will tell me what it  
9 was.

10 MR. CHARNEY: Basically a submerged radial arm  
11 gate. I'm sure that helps any.

12 (Laughter.)

13 SECRETARY DOHERTY: I actually had it figured out  
14 from my dictionary research that that was kind of what it  
15 was.

16 MR. CHARNEY: This an historic moment, if you  
17 will, because this new project will bring such important  
18 flood protection to Sacramento.

19 SECRETARY DOHERTY: Yeah, it's tremendous.

20 PRESIDENT CARTER: So are there any more  
21 questions for Mr. Charney or Ms. Bronson?

22 If not, the Board will entertain a motion.

23 SECRETARY DOHERTY: Well, I would like to make a  
24 motion that we approve the --

25 GENERAL MANAGER PUNIA: -- Resolution 07-03.

1 SECRETARY DOHERTY: All right.

2 -- 70-03 in its entirety.

3 BOARD MEMBER RIE: Second.

4 PRESIDENT CARTER: Okay. We have a motion to  
5 approve Board Resolution 07-03 for the Joint Federal  
6 Project -- the Folsom Dam Safety and Flood Damage  
7 Reduction Joint Federal Project.

8 And by approving this -- just checking with our  
9 legal counsel, by approving the resolution, we do -- do we  
10 need to make separate findings with regard to the  
11 overriding considerations or approve the mitigation  
12 monitoring plan or --

13 STAFF COUNSEL MORGAN: Are those in your report?

14 MR. CHARNEY: Those are listed in the resolution.

15 STAFF COUNSEL MORGAN: Okay. Then I think we  
16 should find them.

17 PRESIDENT CARTER: Okay. Very good.

18 So does everybody understand the motion?

19 Any discussion?

20 BOARD MEMBER BURROUGHS: Yeah, a little bit of  
21 discussion here.

22 I'd just like to know if staff has any comments  
23 or questions about any of these items.

24 CHIEF ENGINEER BRADLEY: No.

25 SENIOR ENGINEER BUTLER: No.

1 CHIEF ENGINEER BRADLEY: No comments from staff.  
2 This is -- as Lady Bug said, this was a highly coordinated  
3 project among many entities and it's worked extremely  
4 well.

5 BOARD MEMBER BURROUGHS: Thank you.

6 PRESIDENT CARTER: All right. All those in favor  
7 of approving Resolution 07-03 indicate by saying aye.

8 (Ayes.)

9 PRESIDENT CARTER: And opposed?

10 Motion carries.

11 MS. BRONSON: Thank you.

12 MR. CHARNEY: Thank you.

13 PRESIDENT CARTER: You're welcome.

14 Anything else?

15 MR. CHARNEY: I would just say again, this is an  
16 historic moment. I think we have an opportunity -- or we  
17 have just realized the opportunity to produce a project  
18 that will carry on for many, many decades and provide  
19 flood protection to Sacramento. Thank you very, very  
20 much.

21 PRESIDENT CARTER: You're welcome. Thank you for  
22 all your efforts. And we -- as we have before, we commend  
23 all of the participants. Getting the Corps and Bureau  
24 working together in lock step and the state supporting  
25 that along with SAFCA is a tremendous effort, and

1 everyone's very, very pleased.

2 Thank you.

3 All right. Item 11, Consider Approving a Letter  
4 to the U.S. Army Corps of Engineers regarding Project  
5 Alteration Process, i.e., the 408 Committee.

6 Mr. Butler.

7 SENIOR ENGINEER BUTLER: I'm just clearing out  
8 the presentation.

9 VICE-PRESIDENT HODGKINS: Okay. As the Board  
10 will remember at the last meeting, we asked the Board  
11 whether from a policy standpoint they were interested in  
12 moving forward and trying to clarify and accelerate the  
13 408 process. The answer was, yes, they were. We drafted  
14 a letter. We have reviewed the letter. Mr. Chairman, I  
15 want you to correct me here if I'm wrong. But I think DWR  
16 has incorporated any comments they might have into the  
17 letter.

18 GENERAL MANAGER PUNIA: The letter which was  
19 included in the package was routed to the DWR because this  
20 was a joint letter. So our counsel and the DWR counsel  
21 has made minor editorial comments, and those have been  
22 incorporated in the letter, which was handed to you today  
23 and includes those changes.

24 STAFF COUNSEL MORGAN: Yeah. And what I would  
25 recommend is, because it has not received the final review

1 by DWR -- you can take a look at this. This is the  
2 version that has gone up through DWR but then has not been  
3 reviewed for some subsequent changes. They'll need final  
4 buy-off by the chief counsel and by Lester Snow. And what  
5 I would recommend is that you'd adopt this language, allow  
6 for the possibility for minor nonsubstantive alterations.  
7 And then we'll have to come back to the Board again.

8           GENERAL MANAGER PUNIA: That's correct.

9           VICE-PRESIDENT HODGKINS: Since the last meeting,  
10 the Committee also met with the District Corps of  
11 Engineers where Colonel light was there. The district was  
12 very supportive of this. The district then arranged for a  
13 meeting with Steve Stockton from headquarters, who is kind  
14 of the overall guy that would be dealing with this at the  
15 headquarters level. We did go ahead and meet with Steve.  
16 And Steve also was supportive from the standpoint of  
17 head -- he would try to help us to get a taskforce created  
18 that would eventually lead to the production of some sort  
19 of -- and I'm being careful here because of our own  
20 regulations and the Corps's -- but some sort of guidelines  
21 that might help folks work through the 408 process. And I  
22 looked the letter over with the subsequent modifications.  
23 They were improvements in the overall tone.

24           Teri, have you had a chance to look it over?

25           BOARD MEMBER RIE: Yeah. The changes were very

1 minor.

2 VICE-PRESIDENT HODGKINS: Yeah.

3 BOARD MEMBER RIE: And if I could add, the Corps  
4 is very supportive of setting up this ad hoc task force to  
5 at a minimum provide clarifications to our partners in  
6 flood control. I think there's a great interest out there  
7 to know exactly what's needed and what's required by the  
8 Corps to move these projects forward.

9 SECRETARY DOHERTY: I thought it was good letter,  
10 very understandable.

11 VICE-PRESIDENT HODGKINS: Good, good.

12 So the 408 Committee I think is recommending that  
13 the Board approve this subsequent to any revisions of a  
14 nonsubstantive nature that may be suggested by the  
15 Department of Water Resources.

16 PRESIDENT CARTER: So then the process should  
17 there be revisions by DWR executive, the letter would come  
18 back to Rec Board staff and they would determine whether  
19 or not they're substantive, in which case if they were,  
20 would go back to the committee?

21 STAFF COUNSEL MORGAN: You'll be the one signing  
22 on behalf of the Board. You could make the call whether  
23 it's a substantive change. It's already gone up through a  
24 fair amount of review at DWR. I don't expect too many  
25 more changes. But on the off-chance that someone makes a

1 change that you're not happy with, then you simply  
2 don't -- you would simply not sign it and it would come  
3 back to the Board.

4 PRESIDENT CARTER: Okay. Is the Board  
5 comfortable with that?

6 SECRETARY DOHERTY: Sure.

7 PRESIDENT CARTER: Okay. All right.

8 SECRETARY DOHERTY: Then I'll second it.

9 VICE-PRESIDENT HODGKINS: Thank you.

10 PRESIDENT CARTER: So we have a motion to  
11 approve, subject to potential revisions, and a second.

12 Any further discussion?

13 BOARD MEMBER RIE: If I could just add, that we  
14 should probably change the district engineer to Colonel  
15 Chapman. And if DWR has any suggestions as to folks they  
16 want to add at the state level or at the Department of  
17 Resources to receive copies, that would be okay too.

18 PRESIDENT CARTER: You're referring to the cc  
19 list?

20 BOARD MEMBER RIE: Yes.

21 PRESIDENT CARTER: All right. If no further  
22 discussion -- Mr. Punia.

23 GENERAL MANAGER PUNIA: I just want to make a  
24 comment. I want to acknowledge the efforts of  
25 Vice-President Butch Hodgkins and Board Member Teri Rie on

1 this effort. It's been huge.

2 PRESIDENT CARTER: Thank you.

3 BOARD MEMBER RIE: And we'd like to acknowledge  
4 the Corps of Engineers for all their help.

5 PRESIDENT CARTER: All right. All those --

6 BOARD MEMBER BURROUGHS: Steve has a comment.

7 PRESIDENT CARTER: I'm sorry.

8 CHIEF ENGINEER BRADLEY: There is a  
9 nonsubstantial change to this. Colonel Light is no longer  
10 district engineer. It is now Colonel Chapman. So we  
11 would probably want to adjust that.

12 PRESIDENT CARTER: So noted.

13 All those in favor indicate by saying aye.

14 (Ayes.)

15 PRESIDENT CARTER: And opposed?

16 Very good.

17 Thank you, all.

18 On to Item 12. As mentioned at the beginning of  
19 meeting, this is going to be an informational discussion.  
20 There will be no action taken by the Board. But we do  
21 invite all to participate.

22 This is to consider proposed policy for  
23 mitigating hydraulic impacts due to improvements to the  
24 Sacramento and San Joaquin Rivers flood control projects.

25 This is something that members of the Board and

1 staff have been working on for quite awhile. As many of  
2 you may recall, we engaged a consultant, David Ford, to  
3 help structure and articulate the issues and the  
4 considerations and the trade-offs. He made a presentation  
5 to the Board and the public -- was it two or three months  
6 ago?

7           GENERAL MANAGER PUNIA: In March.

8           PRESIDENT CARTER: In March. And what we'd like  
9 to do is have an open discussion on -- I'd like the Board  
10 to kind of articulate what their perspective is, what  
11 direction they'd like to head with regard to the hydraulic  
12 mitigation and improvements to the State Plan of Flood  
13 Control. I'd like staff to also share their perspective  
14 and concerns with regard to this.

15           But we've been struggling with how to essentially  
16 implement some sort of a policy that allows both the  
17 Board, the staff, and the applicants to the Board --  
18 allows them to understand where the Board is heading in  
19 terms of improvements to the State Plan of Flood Control  
20 and potential hydraulic mitigation as a result of those  
21 improvements.

22           So with that, I'd open it up. Is there a member  
23 of the Board that would like to launch into this? Maybe  
24 I'll start.

25           My perspective on this is that I think there's a

1 general agreement on the Board that we do want to make  
2 improvements to the State Plan of Flood Control. We  
3 recognize that there are some weaknesses. There are some  
4 areas where I think we believe that design -- that the  
5 design level of protection afforded by the system as it  
6 was turned over to the state is probably not adequate in  
7 certain areas, and in particular certain urban areas. And  
8 so we want to make improvements.

9           Where we make improvements there will be -- it's  
10 reasonable to assume that there are going to be some  
11 hydraulic impacts. Sometimes, yes, sometimes, no.

12           In the case where there are impacts, we need to  
13 understand how we're going to handle those. Are  
14 there going to -- are we going to have to do some  
15 hydraulic mitigation as a result either by -- either  
16 through the tools that we currently have in terms of  
17 flowage easements or purchase of property or buying the  
18 right to flow on certain properties? These are all things  
19 that we need to determine as we make these projects.

20           I feel that we need to make improvements to the  
21 system; and we cannot, as we have in the past, continue to  
22 be stopped from making improvements because we don't  
23 understand what the hydraulic impacts are and what we  
24 ought to do about it. So that's, in general, my  
25 perspective.

1           I think that we ought to on a case-by-case, if  
2 there are hydraulic impacts, we assess what the hydraulic  
3 impacts are, we determine if mitigation is required, and  
4 we go ahead and do that. I think we have to -- we are  
5 committed to public safety, we are committed to improving  
6 the public safety, and the Board will have to make some  
7 tough decisions with regard to hydraulic mitigation. But  
8 we need to have help in terms of identifying what the  
9 implications are of the changes in the system and  
10 what -- and then what we need to do about it.

11           So who else wants to launch into this?

12           VICE-PRESIDENT HODGKINS: I think it's in some  
13 ways a very difficult issue and yet in other ways perhaps  
14 not difficult at all. I took a shot at, thinking that I  
15 had some idea, first of all, between -- based on  
16 discussions between Ben and I, that something that might  
17 serve as at least a strawman document to focus in on. I  
18 immediately ran into the regulation -- underground  
19 regulations issue with it, and that triggered a discussion  
20 between Scott and I. And so, you know, there have been  
21 some other discussions going on. There was a big DWR  
22 meeting and a lot of frustration at not being able to deal  
23 with this issue.

24           If I could make an attempt -- I think there are  
25 three elements of hydraulic impacts. Okay, right off the

1 bat, if you altered the system in such a way that you  
2 change the relationship between the depth of the water in  
3 the channels anywhere in the system and the flow that's  
4 occurring at that depth, and in doing that you raise the  
5 water level, then potentially you have a hydraulic impact.  
6 Because now somebody who used to think they were going to  
7 pass, I don't know, 80,000 cubic feet a second at  
8 elevation 17 finds out 80,000 is at elevation 18, then  
9 that's potentially an impact that has to be analyzed in  
10 terms of you might be causing more frequent flooding  
11 somewhere at a higher risk.

12           That's a cut-and-dried one that's pretty easy to  
13 analyze with a hydraulic model.

14           The next one is -- and this is the one that I  
15 have struggled with -- is the fundamental question of, if  
16 I improve my levee so that now I'm not going to flood, how  
17 do I figure out if -- whether or not the fact that the  
18 flooding isn't going to occur in my area and I've kept the  
19 water out of there and sent it on down the river, how do I  
20 figure out whether I've increased the frequency of  
21 somebody else's flooding? And in my opinion, a lot -- at  
22 first I thought this very fancy risk and uncertainty was  
23 the way to deal with that. Really when you get down to it  
24 in the end, in my opinion, engineers can't tell you when a  
25 levee's going to fail. Okay? They can tell you when they

1 think it's not safe, but not when it's going to fail. If  
2 we knew when they were going the fail, they wouldn't fail  
3 because we get out there and fix them before they'd fail.  
4 Okay?

5           So that analysis is really an analysis that can't  
6 be done. And the other question that goes with that  
7 that's hard to deal with is: Is somebody else entitled to  
8 the flood protection that they get by flooding me and  
9 damaging me? And it works both ways and it's a chicken  
10 and egg question and I don't think we resolve it. And we  
11 certainly can't do an analysis that is definitive in terms  
12 of which levee's going to fail first.

13           Okay. So that's the one that we have I think  
14 struggled with the most.

15           Then the third one would be the issue of: Have I  
16 somehow changed the water levels in the system so that now  
17 I have created a situation where somebody else's levee is  
18 going to be overtopped where previously it wouldn't be  
19 overtopped? That again is a very analyzable thing. And  
20 while I think there are people who will argue about  
21 whether there's any point in doing that or not, I think to  
22 some extent it makes sense to do that.

23           In discussing this with Scott, Scott I think  
24 really helped me to focus in and see at least the issues  
25 that he thought were important in getting an analysis to

1 the Board. And I'd like to ask him if he could kind of go  
2 over that the way he explained it to me, because it gave  
3 me a different view.

4 Scott.

5 STAFF COUNSEL MORGAN: Thanks.

6 Now, I'll see if I can remember what I said.

7 I think what I was stressing was a need to see  
8 the system as the status quo. The courts have long held  
9 in a number of circumstances that a system though  
10 artificial has persisted for a long time is entitled to be  
11 treated as a natural system by the people who rely on it.  
12 And you start to tinker with it, and they have cause for  
13 alarm and complaint.

14 So the first thing is, whatever you're doing,  
15 what is it going to do to others? And -- especially if  
16 you're downstream particularly. I'm not going to worry  
17 about particulars, because that's for the engineers and  
18 the modelers, to worry about how -- you know, who's going  
19 to be affected and how you demonstrate this.

20 But just to take an obvious example, if there are  
21 people downstream who have not flooded because invariably  
22 the system as designed overtops upstream, and now you  
23 raise those levees so it does not overtop upstream and the  
24 water all goes downstream and with some predictability  
25 will inundate some property downstream, those are the

1 people who are going to have some complaints against your  
2 project.

3           The motivation for looking at this is the fact  
4 that as the branch of the State of California, the Board  
5 is either undertaking as a project that it directly  
6 approves and is involved in or simply permitting work that  
7 would otherwise not come forward a modifications of the  
8 plan of flood control and it's going to be held at  
9 standards for inverse condemnation. This is basically a  
10 takings. If your property didn't flood before and now the  
11 state's doing something and it's going to cause it to  
12 flood, potentially, not invariably, but potentially people  
13 will raise a takings issue on the state when it's doing  
14 something that's going to damage people's property as a  
15 duty to look at the implications.

16           Now, it's not always easy to do that. And one of  
17 problems has been hearing the experts, the engineers, the  
18 modelers, and hydrologists. And I asked them about  
19 hydraulic impacts, the federal folks, people at the state,  
20 The Rec Board engineers, the Department of Water Resources  
21 engineers, local folks, people in the private sector, and  
22 I never get the same answer twice about what are hydraulic  
23 impacts and how do you measure it?

24           So it's something in disarray, which is why it's  
25 probably not right for regulations at this point, because

1 I don't think there's a consensus in the industry or  
2 anywhere on exactly when a hydraulic impact has occurred,  
3 when it's significant, and how you mitigate it. Right now  
4 it's going to go out to the Board on a case-by-case basis  
5 to determine those things and its judgment based on all  
6 the evidence presented to it.

7           But, as I say, this is something that the  
8 Constitution demands. If the Government is going to  
9 undertake a project, then -- and one of the criticisms of  
10 doing this is that when I hold that project, these were  
11 good public policies, and nothing that any of us have said  
12 who's talking about hydraulic impacts, the need for  
13 analysis, has suggested these projects are not good or  
14 shouldn't be done, but simply that -- just as CalTrans has  
15 to determine whose property they're taking when they build  
16 a road, even though those are good projects, they have to  
17 compensate the people whose property is taken or damaged.

18           And whoever is going to do a flood control  
19 project ought to go through the same analysis. And  
20 obviously I don't know what the actual modeling analysis  
21 or the engineering analysis is. That's not my job or  
22 that's not within my expertise. I merely say that as the  
23 government, if we're doing something that's going to  
24 adversely affect someone's property, we owe it to them to  
25 say we looked into this and we determined that there is in

1 effect and here's how it's being mitigated. Or it's  
2 within the Board's authority to determine based on the  
3 facts, as was indicated earlier today, that the hydraulic  
4 impact is not significant. And the Board can make a  
5 determination that that particular effect is -- it exists,  
6 you know, one-hundredth of an inch rise in water level.

7 I know in the case of a SAFCA project from a  
8 couple months' back where -- I think it was on the order  
9 of 10 cfs or 20 cfs in a system that conveyed 100,000 or  
10 200,000 cfs. And the Board made a factual finding that  
11 that was not significant.

12 And I think the Board needs to go through the  
13 process of hearing the evidence. It doesn't have to be  
14 time consuming. As I indicated to Joe Countryman at a  
15 meeting awhile back, it doesn't have to be the most  
16 expensive modeling you can run. It can be something  
17 relatively inexpensive so long as it addresses the issues  
18 and allows the Board to make an informed decision.

19 So does that more or less cover what we talked  
20 about?

21 VICE-PRESIDENT HODGKINS: That's good.

22 BOARD MEMBER RIE: But even if you do have  
23 significant impacts, we can adopt a finding of overriding  
24 considerations, right?

25 STAFF COUNSEL MORGAN: Well, this isn't CEQA.

1           BOARD MEMBER RIE: CEQA -- aren't we relying on  
2 CEQA --

3           STAFF COUNSEL MORGAN: This isn't CEQA. CEQA is  
4 just an environmental document. No one's saying that any  
5 one CEQA document that finds that there's not a hydraulic  
6 impacts for environmental purposes is inadequate. This is  
7 based on the constitutional duty of the government if it  
8 takes or damages someone's property for a public use, that  
9 it compensates them. And that's independent of CEQA.

10           And the Board may be relying on the analysis  
11 that's done by CEQA. And if it feels that that analysis  
12 is proper and adequate, then they certainly rely on it.  
13 But in an overriding -- a finding of overriding  
14 consideration would have no weight at all, because there's  
15 a constitutional duty that you can't be overridden by  
16 statutes. CEQA is just a statute that says, you know,  
17 every agency has to adopt these environmental findings.  
18 But the constitutional obligation to provide just  
19 compensation for taking property trumps that.

20           SECRETARY DOHERTY: I think that you can do all  
21 the hydraulic modeling that you want, but that there are  
22 so many variables in a storm and we can't control it,  
23 because there's no way you can feed all of that  
24 information into the computer or into a model.

25           So do all that you want to do, but God's got the

1 final say.

2           PRESIDENT CARTER: One theme -- the theme being  
3 developed here is that I think in the past -- and Butch  
4 will alluded to it -- is the concept of predicting levee  
5 failures. I think we have to -- our responsibility is to  
6 maintain the system so that the levees don't fail. And so  
7 we have to assume that they don't fail when we're doing  
8 these analyses. And so hopefully that's something that  
9 we're all comfortable with and can get beyond that, so --  
10 and that's kind of particularly pointed towards our  
11 technical staff, because I know that you guys have been  
12 struggling with that. I think we need to make the  
13 assumption that the levees are not going to fail within  
14 design parameters and so we don't have to worry about  
15 that.

16           But I would like to hear from the technical staff  
17 on this, what their thoughts are.

18           CHIEF ENGINEER BRADLEY: Couple of things.

19           One, you talked about improvements to a flood  
20 control system and increasing the level of protection. I  
21 guess I want to know under what authority the Board can  
22 make those modifications. People are talking about a  
23 hundred year, two hundred year. You've been given a  
24 system and provided assurances for it. This is a  
25 state/federal system. You can't unilaterally I believe

1 modify that system. I think it takes a legislative -- at  
2 least you could probably change the state portion and  
3 increase protection if the Legislature decides to do that.  
4 That's a question for Board counsel I think more than this  
5 Board.

6 STAFF COUNSEL MORGAN: And that's a different  
7 question. I mean I think this -- I would assume that  
8 whatever the Board is approving, it has authority to  
9 approve as a project amendment. And the question is  
10 simply, what is the hydraulic impact analysis that you  
11 would look to?

12 CHIEF ENGINEER BRADLEY: Right. But they talked  
13 about making improvements by -- you have to have some sort  
14 of authority to do that. It's not something that's given  
15 to the Board to make that until the Legislature has  
16 spoken, in my understanding. You can't go out there and  
17 change the level of protection to 100 year or 200 year or  
18 a thousand year without the Legislature having made some  
19 sort of decision on that.

20 STAFF COUNSEL MORGAN: If I could. Specifically  
21 what kind of benchmark, I guess, would you be willing  
22 to -- or how would you determine the hydraulic impacts?  
23 Putting aside the authority. I mean let's just assume  
24 that that's theirs.

25 CHIEF ENGINEER BRADLEY: My opinion, you have the

1 status quo, you have a system that's designed to provide  
2 certain levels, certain flows, certain conditions. If you  
3 change any of those flows, then you should analyze what  
4 that impact is. Whether that's significant or not, it may  
5 or may not be; but if you're changing the flows in the  
6 system as it has been given you, then you need to analyze  
7 whatever that impact is.

8           On the TRLIA project, the Yuba River, if they  
9 were going to go to a 200-year flow, that is a change in  
10 the system. You need to see what that does to everybody  
11 in the system, because now that is not the design. And so  
12 you're changing that design, you need to -- they need to  
13 analyze that and present to the Board what those impacts  
14 are. If those are significant, then they need to propose  
15 mitigation.

16           BOARD MEMBER RIE: Now, Steve, you said that the  
17 Board doesn't have the authority to make improvements to  
18 the levee system. And I think we do. I think the  
19 Legislature approved the Water Code. I know we could --  
20 we have the authority to raise levees.

21           CHIEF ENGINEER BRADLEY: You need to talk with  
22 Board counsel about that. I don't think you can go out  
23 and change a system unless it's legislatively authorized.

24           BOARD MEMBER RIE: It says right here in the  
25 Water Code that --

1 CHIEF ENGINEER BRADLEY: You're not the attorney.  
2 I think that's for -- a question for Board counsel.

3 BOARD MEMBER RIE: Do you want to comment, Board  
4 counsel, 8713?

5 STAFF COUNSEL MORGAN: I think the Board does  
6 have a fair amount of authority to modify the plan of  
7 flood control. But I'll -- Steve was talking about a need  
8 to according to the Corps or not certainly.

9 But there is a lot of authority in the Water Code  
10 to adopt almost any plan of flood control the Board wants.  
11 But, again, that's not really the issue here.

12 The issue here is, given a project that the Board  
13 wants to approve on its own or approve from an applicant,  
14 what does the technical staff want to look at to determine  
15 hydraulic impacts? And specifically I think the question  
16 is things like, as Butch was suggesting: Are you looking  
17 at overtopping or levee failures or as at the Monte Carlo  
18 simulations?

19 And I guess I'll just weigh in from a legal  
20 standpoint that the takings law is going to require some  
21 specificity. I mean we are not going to be in the  
22 business of compensating everyone for a, you know, .03  
23 percent probability of something happening. I think that  
24 the Board ought to be directing its efforts towards  
25 reviewing very predictable, very discreet sorts of things

1 if there is an identifiable effect of change to the  
2 project.

3           And I do agree with Steve that staff, the  
4 applicant will work together to develop the analysis and  
5 then bring it to the Board, and the Board will determine  
6 if that's significant or not. I'm sure you'll hear  
7 testimony on both sides of the argument. And they'll  
8 weigh in. And the nice thing about this is this is a  
9 fairly new area. You get to make the decisions, you  
10 get -- there's not a lot of guidance here. There's plenty  
11 of history for takings analysis for things that are not  
12 altogether comparable. I mean the closest are going to be  
13 perhaps where you have flood storage in a reservoir and  
14 it's only used in, you know, thousand-year events. So  
15 that's the reservoir that -- that's still takings. This  
16 is different. But it's -- nevertheless if you know you're  
17 going to raise the water surface elevation downstream and  
18 likely overtop levees downstream that historically would  
19 not have been with the status quo, that's something that  
20 you need to look at and determine whether or not it's a  
21 significant risk, it's a significant change. And that's a  
22 determination that the Board gets to make a judgment on.

23           But I think you just need to have the bare facts  
24 presented. And I guess the question is: What are some of  
25 the underlying assumptions that you think are reasonable

1 to accomplish that?

2 CHIEF ENGINEER BRADLEY: It's really up to the  
3 applicant to submit this information to us. I look at  
4 what they submit and say whether it's reasonable from my  
5 point of view.

6 That hasn't happened yet. They have not  
7 submitted stuff that I think that they analyzed the  
8 impacts, especially on the Yuba River or the levee raises  
9 that SAFCA's proposing. Those are changes in the system,  
10 the changing of flows. They haven't analyzed what those  
11 do downstream.

12 In my opinion, what FEMA does for just floodplain  
13 mapping is if you encroach above the design floodplain --  
14 for them it's a 100 year, for us it would be the 1957  
15 profile -- once you exceed that, they assume the levee  
16 fails. And I think that what you've said, President  
17 Carter, is that we assume the levees are good; good up to  
18 that design profile. The freeboard is not considered  
19 providing levee protection. That's there for a lot of  
20 reasons, uncertainty in the design and everything else.

21 I'm not sure whether you should -- this is my own  
22 opinion on this -- is that whether you should consider  
23 those levees good to the top of the levee or not. I think  
24 that, you know, on a conservative basis -- and I think we  
25 should be conservative when we're talking about lives.

1 FEMA's conservative when they're only dealing with money.

2 We're dealing with lives.

3           STAFF COUNSEL MORGAN: Well, again, I want to  
4 make a point, that we're not talking about lives here.  
5 What we're talking about here is compensation if required  
6 by the takings clause. And that's one reason why I think  
7 it's worth diverting from the analyses that the Corps  
8 would do when they're looking to determine the safety of  
9 the levees or the need to repair levees on the one hand  
10 and analyses that might be desirable for the Board to  
11 consider to determine whether or not there's a significant  
12 hydraulic impact that requires mitigation. And I think  
13 those are two completely different sorts of analyses.

14           And I think the one for takings analysis is very  
15 different because you're with the -- the first one is to  
16 determine where the improvements need to go and what they  
17 need to consist of to protect lives and property.

18           The second one is, having made that decision, how  
19 are you potentially going to shunt some of those impacts  
20 downstream on third parties? And if so, who and how do we  
21 compensate them for the damages?

22           So it's -- I think that a different sort of  
23 analysis is appropriate when we're looking simply to write  
24 a check to someone for a flowage easement, because the  
25 project is designed to assist -- you know, protect an

1 urban area.

2           So I don't think that the bifurcate system is  
3 inappropriate, from a legal standpoint anyway.

4           CHIEF ENGINEER BRADLEY: I'm not sure I  
5 understood the difference there.

6           But I believe that if you're looking at impacts  
7 that the levee is designed to provide protection, as it is  
8 now to a certain level, if you exceed that level then you  
9 cannot be assured that it will provide that protection.  
10 FEMA, when you exceed the protection that they certify a  
11 levee to, assumes the levee is not there. And what you  
12 would have would be a larger flood fight.

13           Now, on the paying for that you could go buy a  
14 flowage easement there, you could raise the levee or  
15 strengthen the levee downstream. There's's a lot of  
16 things you could do. It's not up to myself to figure out  
17 what that is. It's up to the applicant to analyze impacts  
18 and propose mitigation for it. It's up to the Board to  
19 decide whether that mitigation is adequate.

20           PRESIDENT CARTER: Mr. Punia.

21           VICE-PRESIDENT HODGKINS: What you see here is --  
22 here is the challenge. And the challenge is, Steve  
23 believes -- I think you're saying we should -- and I want  
24 to be sure I understand, because I may not. Let's say we  
25 decided that the analysis was going to be done on the

1 basis of failure once the water surface exceeds the '57  
2 profile okay. Now, the question is for the applicant,  
3 who's upstream: If he doesn't change the frequency with  
4 which the water surface exceeds the '57 design profile  
5 downstream, how has he had an impact?

6 CHIEF ENGINEER BRADLEY: I'm not quite sure I  
7 understand what you're -- he didn't achieve --

8 VICE-PRESIDENT HODGKINS: The downstream  
9 guy -- let's say for the sake of this discussion the  
10 downstream guy has 85-year level of flood protection at  
11 the design profile before the upstream project is  
12 constructed.

13 After the upstream project is constructed, the  
14 downstream guy still has 85-year level of flood  
15 protection.

16 Is there an impact?

17 CHIEF ENGINEER BRADLEY: Probably not in that  
18 very scenario. The question is: Does he -- did you raise  
19 his water surface elevations or did you increase the flow  
20 that he would have been expected under the existing  
21 conditions? Have you changed that?

22 VICE-PRESIDENT HODGKINS: Well, I think you may  
23 have changed it under the condition of flow in excess of  
24 85 years. Someplace that upstream improvement as  
25 created is preventing flooding where it might have

1 occurred before. And if we experience that event,  
2 whatever it is, then in that particular situation that  
3 upstream improvement may send more water down the river --  
4 probably sends more water down the river. I mean 99  
5 percent of the chance is it sends more water down the  
6 river.

7           Okay. So the downstream guy flooded more under  
8 that circumstance, if we could identify exactly what it  
9 was. But is -- wait a minute. There was more water in  
10 the system when the downstream guy flooded, but the water  
11 was still above the design of his levee as provided in the  
12 '57 profile. So has he been impacted?

13           CHIEF ENGINEER BRADLEY: Yes. I'll tell you why.  
14 In my opinion he has been. Because he -- that '57 profile  
15 was developed under a certain set of circumstances all the  
16 way up and down the system. You have a system here. Now  
17 you've changed a piece of it, and this guy is going to get  
18 more water there. And you've changed his expectation,  
19 because at one time the flow up here was, say, 100,000; he  
20 is going to get 120 under this design. That's what was  
21 given to him. Now you're changing this where this is 150  
22 and now he's going to get 120 or so more -- 20,000 more  
23 under whatever changes you do.

24           So the frequency with which he would get that  
25 water I believe has changed. You have changed the system.

1 You need to analyze that impact and it needs to be  
2 mitigated for.

3           VICE-PRESIDENT HODGKINS: Okay. See, that's  
4 where you get into the impossibility of the analysis.  
5 Because to do that analysis and justify the purchase of an  
6 easement -- and, believe me, these easements are -- I  
7 mean we're talking about potentially thousands of acres --  
8 twenty some thousand dollars an acre times a thousand  
9 acres easily. And it's on the speculation really, because  
10 when you get down to the details, which levee failed first  
11 before we did the project last of all depends on who  
12 mounts the best flood fight, okay? Because when the water  
13 is high, you basically are allowed to do anything you can  
14 do to protect yourself from flooding.

15           So in the end the question of who gets wet is a  
16 question of who mounted the best flood fight, if you get  
17 to that point.

18           What happens more often, based on experience, is  
19 for some reason -- and after the event analysis it's very  
20 difficult for anybody to ever get very specific -- a levee  
21 lets go. And in the Sacramento side of this system, they  
22 have typically let go way before we got even to the design  
23 profile. So you don't know if it's SAFCA or if it's Three  
24 Rivers and you can't determine when it would have failed  
25 and the water would have gone in and flooded Three Rivers.

1 And in the case of Three Rivers, if it gets all the way  
2 down the system, it's a question whether it floods SAFCA.

3           And that's the part that I don't think you can  
4 analyze technically, but selects -- what Steve is saying  
5 is let's do what FEMA does. Let's say that the before  
6 condition is both levees failed at the design profile and  
7 the after-condition is this levee doesn't fail at the  
8 design profile and the other levee does. The frequency  
9 with which somebody got wet hasn't changed, but the amount  
10 of water in the system has changed and there could be more  
11 flooding. But the whole thing is based on an artificial  
12 assumption as to whether the levee failed. And that's the  
13 challenge here for the engineers. Nobody knows how to do  
14 that.

15           CHIEF ENGINEER BRADLEY: I don't think it's based  
16 on when the levee fails. If you add more water into the  
17 existing system, you need to analyze the impacts of what  
18 that does.

19           VICE-PRESIDENT HODGKINS: But, Steve, it's  
20 changing --

21           CHIEF ENGINEER BRADLEY: If you have two garden  
22 hoses and they're putting flow down in one place and you  
23 change one into a fire hose, somebody downstream's going  
24 to get a whole lot more water. And you made that change  
25 without analyzing the impacts of what that's doing. And I

1 think that needs to be analyzed.

2           BOARD MEMBER BURROUGHS: That's the point --  
3 yeah, and I think that's the point -- or the policy that I  
4 think our Board -- I'd really like to see our Board  
5 consider is -- it's been mentioned several times that we  
6 have a system. And I do not want to see any more projects  
7 come before the Board in piecemeal or in segments. I  
8 think we need to look at the whole system when these  
9 projects come through.

10           And I have three other things that I wanted to  
11 ask -- to discuss on as part of this discussion. Is there  
12 a formula for compensation? That's one.

13           And then we've used wording that says design --  
14 as the design flow or as it was designed. And then we  
15 also have the existing condition. And I think in many  
16 times those are two different scenarios to one levee.

17           And then the other -- I'd like other input on  
18 communication on what is the mitigation. Is there -- has  
19 there been a formula for that policy and mitigating?

20           Thank you.

21           PRESIDENT CARTER: I think what I'd like to do at  
22 this point, let's take a ten-minute recess, everybody  
23 gather their thoughts. And then when we come back, we can  
24 address those three questions as well as some others. And  
25 we've got some people in the public that also want to

1 comment on this.

2 So let's take a ten-minute recess.

3 (Thereupon a recess was taken.)

4 PRESIDENT CARTER: Good afternoon, ladies and  
5 gentlemen. Let's go ahead and continue with our meeting.

6 I hope none of you have dinner plans tonight.

7 (Laughter.)

8 PRESIDENT CARTER: This could be a long  
9 discussion.

10 I want to make one comment to launch us into this  
11 discussion again. And my comment is with regard to the  
12 '57 design that the Board has agreed to maintain and be  
13 the custodian of.

14 I think it's generally recognized that the '57  
15 design was good in 1957, was probably good in 1917, and in  
16 some areas in 2007 it's not good enough. And I think that  
17 we need to have a general acknowledgement of that  
18 amongst -- at least amongst the Board and Board staff.  
19 And if that's the case, then we need to make system  
20 improvements and we need to get beyond the issues that  
21 we're struggling with now. We need to recognize that the  
22 system does need to be improved in certain areas and we  
23 need to find a way to do that.

24 Before our break Rose Marie raised several  
25 questions. Scott, you were going to respond.

1           Go ahead.

2           STAFF COUNSEL MORGAN: I'm afraid I didn't write  
3 down the questions, if you could remind me what they were.

4           BOARD MEMBER BURROUGHS: Sure. There were three:  
5 Is there a formula for compensation?

6           How much of a discrepancy is there when we  
7 discuss the words "design" -- the '57 design and existing  
8 conditions?

9           And also, is there anything in verbiage for  
10 mitigation?

11           STAFF COUNSEL MORGAN: Okay. I'll go backwards.  
12 The mitigation is really -- it kind of boils down to one  
13 of two things: Either you modify the project so that it  
14 does not have a hydraulic impact if you determine one  
15 exists or you pay compensation. And you can pay  
16 compensation in any number of ways. You can just buy the  
17 property in fee and lease it back as farmland. You can  
18 just buy a flowage easement. The problem with that is if  
19 the project changes, the amount of invasion changes  
20 someone could sit through another takings. But that's  
21 something for the appraisers, people who acquire property,  
22 to address in terms of, you know, what they would  
23 recommend in terms of the nature of the property acquired.

24           In terms of --

25           BOARD MEMBER RIE: Before you move on, how will

1 you know which property to buy?

2           STAFF COUNSEL MORGAN: Well, that's a  
3 determination that will be made by the engineers and the  
4 Board in terms of looking at the hydraulic impacts and the  
5 Board determining that for a particular parcel there's  
6 been significant impacts.

7           In terms of the formula -- now I'm actually going  
8 to the top of the list -- there is no formula. As I  
9 indicated earlier, the closest analogy that has come up in  
10 common practice for something like this is construction of  
11 dams. Now, when the project was built and large tracts of  
12 land -- the bypasses, for instance, were deliberately used  
13 for flowing water, it was -- it's a little bit different  
14 because there -- you know, everyone knew we were going to  
15 use that specifically for inundating the land to await  
16 flooding out Sacramento or some other area. And so the  
17 area was either bought in fee or easements were purchased.

18           This is like, as I said, having a reservoir that  
19 has a certain capacity for flood storage in very, very  
20 unusual events. And you have people at the top of the  
21 elevation of the reservoir who in their lifetimes may  
22 never see water on their land at that upper elevation.  
23 But you know because of the design of the system that it  
24 can and may and invariably at some point probably will  
25 inundate that property. So it's some kind of a takings.

1 And it's appropriate to evaluate and appropriate to work  
2 out some kind of compensation. And then, again, I'm not  
3 worried about the details of that. That's something  
4 that's an issue that gets addressed once the determination  
5 has been made that that sufficient impact of properties  
6 occurred -- the takings has occurred.

7           In terms of the discrepancy between the design  
8 and the existing conditions, that's sort of a baseline  
9 condition discussion that I think the Board in discussion  
10 with its experts and outside experts can take into  
11 consideration. There's the design profile. And anything  
12 that varies from the design which has been there for 50  
13 years or so is going to be something that may affect  
14 people and they will be able to claim that "Well, I relied  
15 on the design as it existed, the status quo as it existed  
16 for 50 years." That's a good long time. The eyes of the  
17 courts are going to be sympathetic to people who built  
18 homes in communities that are in reliance on the existing  
19 plan of flood control.

20           Another question comes up: What about  
21 modification to the plan of flood control, in particular  
22 ones that weren't by anyone's design? I mean the fact  
23 that the river's scoured out and the design flow in some  
24 places may not reach the design water surface elevation  
25 just because the channel's lower.

1           And I think those are rather detailed questions.  
2 I would -- again, I'd just let the engineers come in and  
3 present their array of arguments. But I think that the  
4 '57 baseline is a good place to start so we can get back  
5 to the things that we've accepted and given assurances to  
6 the Corps for.

7           SECRETARY DOHERTY: The third question she asked  
8 you was actually design as a whole coming in rather than  
9 piecemeal. In other words we take this element today, and  
10 then next year, the year after we take this one. Should  
11 it not come in as an entire design, or at least a  
12 perception or whatever?

13           STAFF COUNSEL MORGAN: Yeah. That's more a  
14 political than a legal issue. I don't think that any of  
15 the staff would prefer not to have a coherent plan of  
16 flood control. Certainly it's something the next time we  
17 do have a water -- a flood lawsuit like Paterno that we'd  
18 like to have a document to take to court and say, "This,  
19 not the 30-page opinion in Paterno, is the actual State  
20 Plan of Flood Control." I mean give it -- we have  
21 chapters just like the water plan.

22           So that would be a good thing to have. And I  
23 just don't know when we can expect it. There's a  
24 requirement in the bond 1E to define the existing feature  
25 of the State Plan of Flood Control. And I don't know how

1 much longer beyond that. I don't even know when that's  
2 going to be done. But I don't know how much beyond that  
3 it will take to incorporate these proposed changes and  
4 then to get everyone to agree on it. And I think there's  
5 an obvious political desire to move faster than that  
6 process will occur.

7           BOARD MEMBER BURROUGHS: That was a separate  
8 comment just in general, Lady Bug. That as a Board  
9 member, of what I've experienced while I've been on the  
10 Board, I'm very uncomfortable with projects that are  
11 coming in in piecemeal. And I really would like our Board  
12 to set a policy that as any new application comes in, that  
13 at least minimally that the whole project be presented  
14 rather than what we've experienced on a few of these  
15 projects where we're just getting a segment or a part of  
16 it.

17           I don't know how other Board members feel. But I  
18 would like to hear a comment from them as well as staff in  
19 regards to this -- to me, a very serious policy as we have  
20 applications come through.

21           PRESIDENT CARTER: Which is the subject of  
22 another discussion.

23           BOARD MEMBER BURROUGHS: Yes.

24           PRESIDENT CARTER: What I'd like to do is hear  
25 from the stack of cards that I have here.

1 Mr. Countryman.

2 MR. COUNTRYMAN: Joe Countryman, MBK Engineers.

3 Mr. President and the Board members.

4 This is obviously a difficult and complicated  
5 issue that I personally have spent a lot of time on. Our  
6 California Central Valley Flood Control Association has  
7 spent a lot of time discussing and trying to understand  
8 and how to evaluate this issue. And it has many levels to  
9 it.

10 One thing I would point out, that improvement to  
11 this system have been going on. The Corps of Engineers  
12 has improved the American River levees from 115,000 cfs  
13 capacity to 160,000 cfs capacity. The Reclamation Board  
14 approved and supported that program. To my knowledge,  
15 they have not made the analysis that Steve recommended,  
16 that he assume the -- without project condition a levee  
17 failed at 115,000. And then you put the levees in and you  
18 can see what happens downstream with the effect. So to me  
19 that would be a total new direction for The Reclamation  
20 Board if you went that way.

21 Now, the Corps does a taking analysis. Talking  
22 to Scott, he says, "Well, you know, the Corps is the  
23 Corps, we're the state. We don't use the same  
24 methodology," which is okay. But the Corps policy is, if  
25 you don't basically change the market value of the land,

1 you're not doing a taking. And by that -- for instance,  
2 let's say a parcel has 125-year level of protection.  
3 Somebody builds a project upstream and now the parcel has  
4 124-year level of protection. The federal government's  
5 view is that's not a taking; you have not changed the  
6 market value of that land.

7           So at least the federal government has figured  
8 out how to do it. I guess the state now has to figure out  
9 how to do it.

10           I want to point out on levee failure what a  
11 quagmire it really is. Ben is absolutely right about  
12 this. If we take the Paterno levee. In 1955 the water  
13 surface elevation of the Paterno levee site reached a half  
14 a -- from a half a foot to the top of the levee -- in  
15 other words there was only a half a foot of freeboard left  
16 on that levee -- and it did not fail.

17           In 1986 it had four and a half feet of freeboard  
18 on it at the worst. And when it failed it had six feet of  
19 freeboard on it.

20           In 1997 it had two and a half feet of freeboard  
21 on it and it didn't fail. 1986 it did fail, the one that  
22 had the lowest stage on it of all of the events. And in  
23 1997 and 1955 it did not fail.

24           So to put a -- as a hydraulic modeler, you say,  
25 you know, "I love complex hydraulic models. That's how I

1 make my living. I love to do complex hydraulic models for  
2 you." But here's the problem: How do we come up with a  
3 rational assumption for levee failures?

4 Another example: The Cache Creek levee in 1995  
5 overtopped. There was about two-tenths of a foot of water  
6 flowing over the top of it. There was an active DWR flood  
7 fight going on at the time that happened. And they were  
8 able to get visquine down on the face of the levee. And  
9 so the water did not erode the face of the levee away and  
10 they saved that levee. It did not fail.

11 So thinking in terms of what kind of taking are  
12 we doing -- let's suppose we had a project that  
13 strengthened the Cache Creek levee. One scenario would  
14 be, well, we'll fail it as designed, three feet below the  
15 levee, and then we'll see what the impact was. Well, the  
16 reality is an analysis like that would way overestimate  
17 the true impact that occurred. So the money that would be  
18 paying out in compensation, would it have any sense of  
19 reality to it whatsoever? I think -- this is a public  
20 purse. We're not just going and handing money out every  
21 place. I think if we do a taking and we're going to pay  
22 for it, it has to be based in some kind of reality  
23 situation.

24 I've done some recent research. Ben and I are  
25 going to be doing some talks at this ASCSME conference

1 coming up on levee failures. That's why I happen to have  
2 some of this information at hand.

3           One of the key factors that appears to be coming  
4 forth is: Was a flood fight being staged or not? I think  
5 it was along the lines of what Butch was mentioning.  
6 There are many instances where levees would have been  
7 expected to fail. But the fact that there was a flood  
8 fight being staged at that location, the levee did not  
9 fail. Cache Creek's an example. RD 17 in 1997 is another  
10 example. There's many, many examples of the effect of  
11 flood fighting.

12           So what does that mean relative to this? In  
13 other words if we're making the assumption that somebody  
14 across the way or downstream is entitled to protection  
15 from a failure of your levee, and if you do something so  
16 your levee does not fail, they're entitled to be  
17 compensated, does that apply to flood fighting? Would  
18 that be a policy that we would advocate, that you cannot  
19 flood fight your levee to keep it from failing because  
20 somebody downstream's entitled to the protection that your  
21 failure would have?

22           One final point. I looked at the three most  
23 recent major failures to the Sacramento River Flood  
24 Control Project, two in 1997, one in 1986, to try to  
25 answer the question: Did that levee failure provide

1 benefit to the downstream people?

2           The answer is: In two of the three, absolutely  
3 not. The failures occurred from 24 hours to 36 hours  
4 after the peak flows went through the system, and provided  
5 no reduction in river stage to the people downstream.

6           In 1997 the flood -- it failed right at the flood  
7 peak. And when we do a -- you know, with our modeling  
8 we're able to calculate the water surface profiles as if  
9 it didn't fail, what would have happened? And the changes  
10 were on the order of like a tenth of a foot or two-tenths  
11 of a foot because the peak flow had already gone past that  
12 point.

13           So even though it seems logical in our minds a  
14 levee failure means somebody's getting protection  
15 downstream, it's not -- you know, historic facts don't  
16 back that up. So however we do this taking thing, I  
17 certainly would have to account for the timing of the  
18 failure as well as the fact that it failed itself.

19           Doing a lot of these studies we've kind of come  
20 to the conclusion, a little different than Steve's, of  
21 saying, okay, if a levee overtops, we feel comfortable  
22 that -- it's a fair statement to say that levee will fail.  
23 So we could do a hydraulic analysis under those  
24 assumptions.

25           We have physical factors that are out there so

1 that we could tie the modeling -- in other words we just  
2 don't have to make this stuff up out of our head. We  
3 could tie it to something. And we can do with and without  
4 project analysis under those conditions. And we can do  
5 them for the original project design, say, the 100-year  
6 flood, 200-year flood. And I throw 200-year flood out  
7 there because I think it's the Board's policy to try to  
8 provide urban areas with a 200-year level of protection.  
9 I'm not certain of that, but I believe that's correct.  
10 And say, okay, how does this project with that assumption  
11 that the levees overfail under the without project  
12 condition when they're overtopped, and if you would raise  
13 the levee, then it wouldn't fail until it overtopped, we  
14 can provide that analysis and we can document the basis  
15 for it.

16 But I think when we start assuming levee failures  
17 below that, it's just a matter of a bunch of assumptions.  
18 And I think we have to be cautious about that.

19 Any questions?

20 PRESIDENT CARTER: Thank you.

21 Mr. Shapiro.

22 (Thereupon an overhead presentation was

23 Presented as follows.)

24 MR. SHAPIRO: Thank you, President Carter. Scott  
25 Shapiro speaking.

1           I've appeared before you almost too many times to  
2 count in the last several years. I'm not actually here on  
3 behalf of a client right now. But the work that I do for  
4 my clients informs my remarks.

5           As you know, in addition to Three Rivers I'm also  
6 counsel for the Central Valley Flood Control Association,  
7 about 25 reclamation districts. So I'm much like other  
8 lawyers in the flood control arena, I find myself acting  
9 on the board as a project manager, because so much of what  
10 we're doing is figuring out as we go along. And I'm going  
11 to try to have my remarks reflect less of a legal bent as  
12 a result.

13           I wanted to start off by noting that the agenda  
14 item actually is a policy for mitigating impacts. And I  
15 know that you're not suggesting this, but I think it's  
16 important to note that we really need a policy for  
17 measuring impacts and we also need a policy for what  
18 impacts need to be mitigated. So it's not just jumping to  
19 what's the policy for mitigating; it's also figuring out  
20 how you measure and then which, if any, do need  
21 mitigation.

22           So I always like starting out with the why are we  
23 having the conversation? What motivated this particular  
24 dialogue? As has been noted by Joe, there have been  
25 improvements to the system over many years, many by the

1 Corps, some by locals. And before, say, a year, year and  
2 a half ago there really wasn't much of a discussion of  
3 mitigation by hydraulic impacts except in some specific  
4 circumstances that I'm aware of. But it didn't seem to be  
5 the kind of significant issue that's perplexing the Board,  
6 perplexing the staff, perplexing applicants as well. And  
7 so, you know, what changed? And I'm not sure of the  
8 answer to that. But I think that should help inform what  
9 the solution is.

10           It seems to me that it's helpful in picking out  
11 the framework to recognize -- Steve said we're changing  
12 the system here. And that really has two implications.  
13 One is we're changing the system; in federal systems we  
14 need federal approval. And the second is we're changing  
15 the system; and is changes to the system going to impact  
16 somebody? And sometimes they're analyzed together. But  
17 sometimes they can be analyzed apart.

18           So we could have a whole dialogue about whether  
19 there's an impact and it should be mitigated. And then  
20 come to the issue of getting federal approval through 408  
21 or whatever it is. We don't have to always merge the two  
22 and get into a confusion of, well, can we mitigate and is  
23 there an impact because we haven't gone to the feds? In  
24 some ways it's really a separate issue.

25           To me, there's really two significant policy

1 questions underlying what you're talking about. One is  
2 liability: Is this going to result in liability? And the  
3 other is: Are you shifting risk? Are you allowing  
4 someone to shift risk? And while they're connected,  
5 they're not necessarily the same thing. And they're not  
6 necessarily the same thing because you can sometimes shift  
7 risk without creating liability.

8           And so this Board is clearly interested in public  
9 safety. And I think the public safety focus is what gets  
10 to the question of: Are you shifting risk? Because if  
11 you are, you want to know that. You don't want people  
12 coming before you asking to do work and then you saying to  
13 them, "Yes, you can do it," and as a result you shift risk  
14 to someone else. That's kind of the moral proper  
15 governmental role.

16           And another legitimate governmental role  
17 protecting the state's fisc is liability. But still  
18 there's separate interests and sometimes they have  
19 separate standards; and I think we need to remember that  
20 as we go through it.

21           So I put this piece of paper up here. And you'll  
22 see how bad an artist I am. But it seemed to me that  
23 there was maybe a hypothetical that would be useful in  
24 explaining some of my thoughts.

25           So we have a river system, whatever it is. And

1 let's say that the design of the river system has 300,000  
2 cfs with an elevation --

3 SECRETARY DOHERTY: I've got to read it from  
4 here.

5 MR. SHAPIRO: All the pictures will be bigger.  
6 The numbers are almost irrelevant.

7 SECRETARY DOHERTY: Oh, okay.

8 MR. SHAPIRO: But 300,000 cfs at 87 feet. And  
9 then downstream it's also 300,000 cfs at now 85 feet  
10 because it's a sloping system. There's nothing in  
11 between. Just levee. No tributaries or anything like  
12 that.

13 Well, as I understand it, what that means is that  
14 when they did the '57 profile they said, "Aha! There's 87  
15 feet, 300,000 cfs. We're going to build a levee and we're  
16 going to make sure there's three feet of freeboard on top  
17 of it and that the profile is 2 to 1 and 3 to 1 and 14  
18 feet across on the top," or whatever the dimensions are.  
19 And they did the same thing down here. They took that  
20 point, constructed the levee, made sure there was  
21 freeboard, made sure there was 2 to 1, 3 to 1, 14 feet  
22 across and 3 feet of freeboard. So that's our system;  
23 very simple system in a sense.

24 Well, the question is is when this guy now says,  
25 "There's been some instability on my levee and I don't

1 want to put some dirt here," is there a hydraulic impact  
2 on this guy down here? And you can say there is -- under  
3 legitimate engineering analysis you can say two things:

4           One, this increases the seepage path that slows  
5 down the rate at which water goes through. That leaves  
6 more water in the river; therefore more water will go  
7 downstream and impact this levee.

8           And you might also say this makes this levee less  
9 likely to fail. And at a particular frequency if it  
10 doesn't fail, then there's all that water where it would  
11 have failed coming down this one.

12           But to me this is a little bit like angels on the  
13 head of a pin. I agree with what I think Butch was saying  
14 before, which is this is almost impossible to calculate in  
15 a way that's meaningful. Not that it's -- it's not  
16 impossible to calculate, but in a way that's meaningful.  
17 How do you assess whether you have shifted risk to this  
18 guy as a result of thickening this levee. We haven't  
19 raised it, haven't put a slurry wall in it. All I've done  
20 is thickened it a little bit. And how do you measure the  
21 impact?

22           So coming back to my points. The law doesn't say  
23 that an impact is, by definition, cognizable and  
24 compensable. What that means is there needs to be a  
25 legally cognizable injury. If I walk up to Tim Washburn

1 because he's with SAFCA and he's going to impact my levees  
2 and I push him like this, he may have immediate impact on  
3 him. But the law doesn't say you have legally cognizable  
4 injury. And that's because there's some sort of  
5 significance criteria, there's a de minimis criteria. We  
6 don't say everything we've all said in injury that the law  
7 can address. So we need to think a little bit about what  
8 sort of de minimis standards apply here and circumstances  
9 where we can assume there is a de minimis impact and  
10 therefore we don't have to go chasing an impact and figure  
11 out how to mitigate it.

12           If you go back to the issue of shifting risk, as  
13 I've talked about, but the Board wants to make sure you're  
14 not shifting risk from one applicant to someone  
15 downstream, you also need to think about, is that  
16 downstream person entitled to not have risk shifted to  
17 them? Go back to my hypothetical. Is this guy entitled  
18 to this Board making sure this guy doesn't put a little  
19 bit thicker levee up? Is that something that he is  
20 entitled to from this Reclamation Board? Or does the law  
21 say, "That's just not an area where we look to The Rec  
22 Board," and say, "You need to protect against that."?  
23 This thickening is not much different than in between  
24 someone develops a development behind 400-year levees that  
25 results in more impervious surface and a little bit more

1 water ends up in the channel. But the Board doesn't go  
2 after that guy. There just needs to be some recognition  
3 that not all impacts are necessarily requiring to be  
4 mitigated.

5           So my final three points. The discussion that  
6 was had earlier about -- I think Scott noted things are in  
7 flux and maybe it's not the right time to adopt guidelines  
8 or policies or underground regulations or whatever it is.  
9 The concern from an applicant's standpoint is you may not  
10 want to determine what needs to be mitigated, but someone  
11 needs to determine how we test whether there's an impact  
12 and whether it's an impact that should be mitigated.

13           We -- Three Rivers has filed its application on  
14 the Yuba, and that application to raise that levee 3/10 of  
15 a foot has been pending 11 months. We have not pushed  
16 hard on it, so it's not a criticism of your staff, who  
17 have come back with some requests that we provide  
18 additional information to them. But one of the reasons we  
19 haven't pushed hard on it is we're not sure what it is we  
20 would do that would satisfy the inquiry of even  
21 determining whether there's an impact. And so maybe  
22 you're not ready to say, "These are the impacts that have  
23 to be mitigated" or "this is the mitigation we require."  
24 But some certainty in an applicant as to whether there is  
25 an impact and how we measure it would be a great thing.

1           The other thing that struck me as we were sitting  
2 and talking is whether maybe 408, a process that I'm not  
3 in love with and I find a little slow and bureaucratic at  
4 the moment, couldn't help us here.

5           408 is the federal government saying, "Yes, you  
6 can affect the project which we partner with you on." But  
7 the 408 process also requires them to look and determine  
8 that you're not having negative impacts to the system. So  
9 if something has already gone to the federal government  
10 for 408 approval, couldn't the Board reasonably rely on  
11 the Corps's determination that this is okay in you  
12 determining that either there aren't impacts or they're  
13 not legally cognizable impacts or that their impacts don't  
14 have to be mitigated? Not just about they said the system  
15 could be changed. It's about maybe their test when  
16 they're looking at it is a reasonable approach for you  
17 when it goes to 408 approval.

18           And then the final point is just that I would  
19 encourage the Board to try to reach some resolution on  
20 guidance to applicants so that we know what to come  
21 forward with. Steve made the probably very legitimate  
22 comment that the analysis he has seen to date he's not  
23 been comfortable with. And that may be absolutely true.  
24 Nonetheless, we're not sure what it is that would give the  
25 staff and The Reclamation Board comfort. And without

1 knowing that, it becomes a submittal, revise, submittal,  
2 revise process. So something that tells us, "This is the  
3 test, this is what you do," and then we'll look at it case  
4 by case, it would be very helpful.

5 Thank you.

6 PRESIDENT CARTER: Thank you.

7 BOARD MEMBER RIE: I have a question.

8 In your picture up there -- I know we talked  
9 about there would be a small amount of water that would be  
10 sent downstream because the seepage path will be slower.  
11 Well, what happens if the channel, which is 300 cfs in  
12 your example, what if it's all chucked with cottonwood  
13 trees and it's effectively only 200 cfs?

14 MR. SHAPIRO: Yeah, and --

15 BOARD MEMBER RIE: And what's the de minimis  
16 standard for taking or liability in that situation?

17 MR. SHAPIRO: Well, and that I think takes me  
18 back to my first -- or one of my first few points, which  
19 is, why are they asking the question? Is it because we're  
20 concerned about liability? Or is it because we're  
21 concerned about transferring impacts? In that case, it  
22 doesn't seem to me that this is really transferring impact  
23 if this levee is going to fail is because of the  
24 cottonwoods.

25 So, you know, this is an overly simplistic, as

1 everyone knows, model and every additional fact that you  
2 add between the two including the cottonwoods just goes to  
3 demonstrate how modeling like this really doesn't make it  
4 clearer; it just makes it more complicated.

5 I don't know that that really answered your  
6 question other than to agree that that additional factor  
7 demonstrates just how hard it is to even take the simple  
8 solution and say whether there's a legally cognizable  
9 injury.

10 PRESIDENT CARTER: Thank you.

11 Mr. Washburn.

12 MR. WASHBURN: Thank you, Mr. Carter, members of  
13 the Board. Tim Washburn. I'm agency counsel for SAFCA.

14 I appreciate Scott's artistry here.

15 And I'd kind of like to talk about it as sort of  
16 three ways that we've addressed this issue. Historically  
17 was of course The Rec Board in to carrying out its  
18 regulatory responsibilities. And we have CEQA where we  
19 need some standards for doing analysis under CEQA. And  
20 then of course Scott has raised the takings issue, which  
21 is of course also a concern to us in terms of, as Scott  
22 said, potential exposure of the state to claims, et  
23 cetera.

24 Now, one thing that it is clear in the historic  
25 practice of The Rec Board is if Scott had drawn that

1 little chunk of dirt put there on the other side of the  
2 levee, The Rec Board would have been very concerned. And  
3 we've dealt with in many context restoration projects,  
4 encroachments of all sorts. We all know The Rec Board's  
5 very scrupulous about the potential for a proposed change  
6 to raise the water surface elevation at the design flow,  
7 at the 100-year flow, or at other flows. Mostly those are  
8 the two that the Rec Board has historically looked at when  
9 somebody proposes to put something on the waterside of the  
10 levee.

11           And you're predecessors worked with SAFCA and  
12 others for a long time on the riverfront where we're all  
13 contemplating -- or two cities at least were contemplating  
14 docks, structures, and other things to bring people close  
15 to the water, because people enjoy being at the water.  
16 This raised any number of questions about what's  
17 acceptable in terms of placing things on the waterside of  
18 our structures, which might have an effect on raising  
19 water surface elevations. So that's an area where I  
20 believe everyone would agree the historic practice has  
21 been we're pretty intolerant of doing something that would  
22 cause the designed water surface elevation to rise because  
23 you've done something to change the system that caused  
24 that to occur.

25           I think along those lines we also are being

1 scrupulous and careful about changes in the design of the  
2 system that -- for example, a widening of a weir or the  
3 changing of a weir or something that would alter the basic  
4 flow pattern in the system, we'd be also quite scrupulous  
5 about the effects or impacts of that, because you're  
6 basically changing the design.

7           The one we've struggled with, as Scott  
8 illustrates very well, just about everything you do to a  
9 levee on the landside, in particular, or even the  
10 waterside, we put bank protection, everything you do  
11 alters the risks somewhat. We're all familiar with Monte  
12 Carlo, Marbles in a Barrel. I'm mean you could virtually  
13 do nothing that doesn't in some way alter the marbles in  
14 those barrels. And as Scott's pointed out, we can't  
15 obviously claim that every change in the alignment of  
16 marbles in the barrel is something that we have to do  
17 something about. So what we're really asking is when are  
18 the marbles so substantially changed that you've got to do  
19 something?

20           SAFCA offered to you, and probably we didn't yet  
21 engaged deeply enough in the discussion, an EIR in  
22 connection with our ongoing program that had the following  
23 standards of significance in it for your consideration:

24           First of all, did anything that we did or  
25 anything we were proposing to do by our modeling -- and we

1 used the esteemed firm of MBK of course for this modeling  
2 exercise -- did anything that we proposed to do alter the  
3 water surface elevation at the design flow of the system?  
4 Because that's where we're most scrupulous. And certainly  
5 if we were proposing to do anything that would alter that  
6 water surface elevation, we would respectively say, "You  
7 need to do something about that."

8           We concluded no. Nothing we're proposing to  
9 do -- in our levees the chunk we're adding is on top as  
10 well as on the side. I'll admit that. We're proposing to  
11 put a chunk on the top and the side in Natomas. So we're  
12 raising levees or proposing to raise levees at Natomas,  
13 which is raising more difficult questions for the Board to  
14 deal with. But we analyzed, is the levee raising or the  
15 levee widening that we're proposing to do, is that  
16 changing the design flow system? We concluded no, it's  
17 not.

18           Then we asked the question: Well, is it changing  
19 the flow at the 100-year frequency in the system? Now, we  
20 had to then address Steve's question: What assumption are  
21 you making about levee failures, et cetera? And we  
22 assumed that a levee would hold to the top for purposes of  
23 this analysis.

24           So our failure mechanism was if the levee  
25 overtops, then we fail it. But if it doesn't overtop, we

1 don't fail it. And we ran the model to see. Did we  
2 change the 100-year water surface elevation anywhere  
3 upstream or downstream? Answer, no.

4           Then we took it one step further because we're  
5 planning for a 200-year flood control project, and we ask  
6 the same question for a 200-year: Did we alter the flow  
7 in the system at 200 year? And once again we concluded  
8 that we did not. Okay? So on that basis, we concluded  
9 under CEQA no significant impact.

10           Could we conclude no risk shifting? Of course  
11 not. Then our project wouldn't have any benefits because  
12 it's keeping water out of Natomas in some circumstance.  
13 And if it's keeping water out of Natomas, the water's  
14 going somewhere else. So I mean you can't have a cost  
15 beneficial project if there isn't some risk shifting.

16           But we still have the same question Scott has:  
17 When does risk shifting give rise to something you need to  
18 do about it?

19           Now, our problem is we know that water's going  
20 somewhere under some circumstances, but we have the same  
21 problem as everybody else. It's impossible to be precise  
22 about where it's going, under what circumstances and doing  
23 what. And if you presented an appraiser with that  
24 information on all the areas that could potentially see  
25 some increase in inundation under some circumstances,

1 they'd say, "I can't do that. How am I supposed to do an  
2 appraisal when you give me this information?" And we  
3 agree, you cannot arrive at any reasoned judgment about  
4 what its impact is to the market value or economics of  
5 some property on downstream. You could just say, "We  
6 acknowledge there is some risk shifting occurring here.  
7 We acknowledge." But it cannot be so specifically  
8 ascertained as to arrive at some remedial step that we  
9 could take.

10           And that's the document we presented to you in  
11 February. We're going to present it to you again in  
12 August because we're rolling forward here. And of course  
13 this dialogue will continue. But we submit to you that  
14 the analysis that we've put in that document for CEQA  
15 purpose is pretty well reasoned and could -- it's led us  
16 to the conclusion that there isn't a significant impact  
17 requiring mitigation at least under CEQA. And we hope the  
18 Board will reach that conclusion from the standpoint of  
19 its stewardship of the system as well.

20           Thank you.

21           PRESIDENT CARTER: Thank you. Mr. Eres.

22           MR. ERES: Good afternoon. Tom Eres. I thank  
23 you for the opportunity to share with you the thrill of  
24 trying to solve a Gordian knot, because I think in some  
25 ways that's what you're trying to do.

1           President Carter, you set the stage correctly I  
2 think when you said the State Plan of Flood Control needs  
3 modification. I always came from the idea that you do  
4 your strategy first and then you work out how you're going  
5 to do your operations and your tactics. And I think right  
6 now what we're finding is that status quo doesn't mean a  
7 whole heck of a lot unless we really understand status  
8 quo. When you're talking about the California Debris  
9 Commission Plan, all of the iterations of it today, do we  
10 really have an understanding of 1600 miles of levee and  
11 that they're all the same today on both sides of the  
12 levee? Do we really understand the metrics to be able to  
13 assess or even to identify what the, quote, system is  
14 today that we're modifying. I would suggest not.

15           But we talk about various things like hydraulic  
16 impacts and mitigation alternatives and what the policy  
17 ought to be. I don't see how you can get there at this  
18 stage of the game until you have that end state, your plan  
19 of flood control in place. That's sort of end state. And  
20 then the ways that you're going to use to try to take and  
21 implement it and then ultimately what the means are, what  
22 the cost is going to be.

23           I was intrigued by Scott Morgan's comments,  
24 wearing the legal hat. But there are really four  
25 components to your equation that you need to look at.

1 Legal is just one of them. Joe Countryman, et al.,  
2 Engineering is the other big one. And then there's the  
3 900 pound gorilla that nobody wants to recognize, and  
4 that's economics. And then you finally get to the point  
5 where you're talking about sheer pure politics.

6 Now, you know my view. I've mentioned it many  
7 times. As far as I'm concerned, you can take, 50 year,  
8 100 year, 150 year, 200 year, 500 -- throw that in the  
9 waste basket. In my view in terms of the metric, they're  
10 worthless.

11 The only thing that really counts is: What did  
12 you design this flood work to handle in terms of cubic  
13 feet per second elevation, weight, and duration of that  
14 stuff coming down called water? And what are the  
15 implications of those four components in terms of what you  
16 have designed before you get into, in my view, what you  
17 are trying to modify?

18 You can talk about shifting risks. I can go  
19 through a whole list of how our predecessors tried to  
20 define that risk and go out and grab easements and pay  
21 money for it. Well, the easement was based upon what?  
22 Well, what the system was in that particular location at  
23 that time, did that change? At any time you make a  
24 modification have you increased the burden with respect to  
25 what was expected by the grantors of those easements? And

1 how do you measure what that impact is? Do you go and get  
2 a bunch of appraisers to try to set there and say, well,  
3 diminution value is such and such; and if it's slightly  
4 above de minimis, you get a farthing, and if it's slightly  
5 below de minimis, go pound sand? I'm not exactly sure  
6 that that gets us where we need to go.

7           So I guess what I'm getting to is: That at the  
8 end of the day, what is it that you want to accomplish  
9 when you're talking about looking at hydraulic mitigation  
10 for modifications of a levee system? And that's why I  
11 suggested it was a Gordian knot. Until you get to the  
12 real issue, which is, do you want to modify your State  
13 Plan of Flood Control, which is where I think you really  
14 want to go, you've got to set your metric there. And I  
15 think when you do that, you're going to find 1997 profile  
16 is worthless. We've got too much anecdotal information  
17 that's come in since 1997.

18           The other 900 pound gorilla out there has to do  
19 with global warming. We're just beginning to touch the  
20 surface of global warming, what that will add in the way  
21 of potential sea change, what that will do with respect to  
22 what the potential inundation frequencies will be and  
23 their duration. What's driving all of this stuff right  
24 now, I'm fearful of, is just pure and simple development  
25 interest to put development property -- take property that

1 is green sites and develop them. That's what the engine  
2 is behind what we're dealing with here today, in my view.  
3 Because at the end of the day when you go back and look at  
4 the system, it wasn't designed by developers for the most  
5 part. It was farm and ranches. Now it's being designed  
6 by developers who need to have protection in order to get  
7 banks to lend money on mortgages so that they can sell the  
8 houses they want to build. And they can't do that unless  
9 they have a certain level of protection that they can  
10 ensure to shift the risk.

11           From your standpoint I think you can put all of  
12 that aside and just start with almost a zero-based  
13 analysis and say, "Do we know the 1600-mile system we  
14 have? Do we really know it? Does it need to be modified?  
15 And what is it we're trying to do to create equal  
16 protection for all sides of the levee, regardless of  
17 whether it's urban on one side or farms and ranches on the  
18 other?"

19           Don't we want a system that provides that equal  
20 protection and provides the kind of cubic feet per second  
21 at a certain elevation at a certain weight for a certain  
22 duration and do the best we can? And if it's about it's  
23 force majeure, an act of God, that exceeds that, then we  
24 have a shared risk, we have a common enemy, if you will,  
25 and we handle it accordingly.

1 Thank you.

2 PRESIDENT CARTER: Thank you.

3 Mr. Foley.

4 MR. FOLEY: Thank you, Board. Good afternoon.

5 This is the Reclamation Board and State of  
6 California Central Valley Reclamation Board. You came in  
7 directly after Katrina. You have multiple  
8 responsibilities, personal knowledge that no one else has.

9 I'd like to echo, reiterate what Mr. Eres said.  
10 If it is not obvious to you that we need a bigger, better,  
11 robust flood control system in the Central Valley and you  
12 are not working towards that, who are we going to look to  
13 for that?

14 We need to -- I'm very familiar with this. I  
15 started a nonprofit over this thing. You talked about  
16 development pressure. If you guys do not see that, you  
17 should not be on the Reclamation Board. If you do not  
18 understand that, you should not be apologizing or making  
19 excuses for what's going on. You need a -- after Katrina,  
20 we voted -- the public has voted 1E money. And if the  
21 Reclamation Board does not understand that, who do we look  
22 to? We need a -- the costs are 400 billion for Katrina.  
23 We paid that. Everyone's paid that. There's 2,000 dead.

24 You are The Rec Board since '05. You must have  
25 some understanding of what needs to be done. We need a

1 bigger, more robust, higher level of protection.

2           And I do have experience with that. I started a  
3 nonprofit. I have direct personal experience of what goes  
4 on at the local agency. And I've come before the Board  
5 many times to try to take my point of view across, that  
6 they will do anything to have development continue.  
7 That's their business. These are advocates for  
8 development. That's their business, their driven life.  
9 And it's just a known fact. And I started in Yuba County.  
10 We have to chase each county around, try to fight at each  
11 county level. Or do we have the Reclamation Board to get  
12 the job done for us?

13           Thank you.

14           PRESIDENT CARTER: Thank you.

15           Okay. That's the last card I have.

16           I think that we ought to close this discussion.  
17 We are not done obviously. But what I'd like to do going  
18 forward is make a commitment that Butch and I will  
19 continue to work with staff and we will try and craft  
20 something that does not -- is not interpreted as  
21 underground regulations, but does provide some -- both the  
22 Board staff and applicant some perspective on how the  
23 Board is going to handle these issues.

24           Steve.

25           CHIEF ENGINEER BRADLEY: Yes, just a couple of

1 things, if I could borrow Scott's drawing.

2 I believe Scott kind of trivialized what we were  
3 talking about. He's talking about adding some fill on the  
4 side of the levee. Part of what we started discussion  
5 about was that we were assuming the levees were not going  
6 to fail. So our levees are assumed not to fail at this  
7 level.

8 If you add some fill to the levee, whether it's  
9 waterside or landside, it does have some minor effects.  
10 You know, you're going to limit seepage. If you had a  
11 seepage wall in the middle of this, there are some minor  
12 effects on seepage. Scott Morgan said you'd need to  
13 analyze that. I'm not sure we've ever really needed to do  
14 that. Seepage in comparison to most channel flows is  
15 minimal. It is not significant.

16 Here what we're really talking about with -- what  
17 I had been talking about is not this kind of a change but  
18 is this kind of a change, where you raise your levee.  
19 And now instead of passing 300,000 cfs, let's go to  
20 400,000 cfs. That's what you're doing, you're changing  
21 the level of protection, whether it's going to 100-year  
22 protection, 200-year. Whatever you're doing, you're  
23 changing that.

24 So now you're saying this system is going to pass  
25 more flow. The question is: What does it do to this

1 gentleman down here? And I think that is the question  
2 that needs to be asked. Part of that is going to be  
3 significance. If you have a system that has a side  
4 channel that you're going to modify and that channel is a  
5 very small flow, let's say it's 800 cfs and you're going  
6 to change it to 900 cfs, you'd increase the flow a  
7 hundred. But if you're running it into a channel that has  
8 2 or 300,000 cfs, it's probably not significant. It makes  
9 no difference what you do on that small side channel.

10           What I'm saying is you have to look at it. And  
11 it may or may not be significant.

12           The question of whether a levee fails or not, I'm  
13 looking at the standard of care on flood plain mapping  
14 basically. And that is established by FEMA. And the way  
15 they look at it is they have a design elevation, in this  
16 case somewhere here. And as long as they can pass their  
17 flow at or below there, they consider that fine. If they  
18 encroach on the area of the freeboard area above that,  
19 they assume the levee is not there.

20           All we're doing here for assessing impacts is  
21 floodplain mapping. We're going to map more area into the  
22 floodplain because we're assuming that that levee will not  
23 function above its design level. It may. You heard Mr.  
24 Countryman say most of them have been successful and not  
25 failed. We're not working on probabilities. What we're

1 trying to do is establish that somebody made the impact  
2 and compensate then for that. You have the option of  
3 compensating right now or you can wait until the event  
4 happens and compensate them then. That's a perfectly  
5 legitimate way of handling the compensation.

6           The trouble is, if you know that they're going to  
7 be impacted, you can pay that compensation now, and it's  
8 going to be a lot cheaper probably than looking down in  
9 the future when 20 years from now that ag land is full of  
10 houses, which may happen. We have no control over that.

11           And that's all I'm saying, is there's a level of  
12 significance involved when you establish this. But the  
13 real question the Board has to answer -- there's an impact  
14 here. It needs to be analyzed and then you have to  
15 determine whether it's significant. If it's significant,  
16 you have to -- somebody has to mitigate for that in some  
17 form or another. You can choose to do it now, can choose  
18 to do it later.

19           So those are going to be questions for the Board.  
20 You can't ignore them.

21           BOARD MEMBER RIE: Can I ask you a quick  
22 question?

23           CHIEF ENGINEER BRADLEY: Yes.

24           BOARD MEMBER RIE: In order to increase the flow  
25 from 300 to 400,000 cfs, wouldn't you have to

1 simultaneously raise the levees on the other side of the  
2 river and then quite a distance upstream as well?

3 CHIEF ENGINEER BRADLEY: Yes. You maybe could  
4 pass 400 without raising the levees on the other one, but  
5 you would reduce their freeboard. They would not have the  
6 same freeboard.

7 BOARD MEMBER RIE: So if you just had one piece  
8 of levee, and the levees upstream are lower and across the  
9 river they're lower, couldn't you look at that as just  
10 increasing their freeboard for that one particular  
11 segment.

12 CHIEF ENGINEER BRADLEY: I think you'd have to  
13 analyze the impacts of your project on other people. If  
14 you're raising your levees to pass 400,000 cfs --

15 BOARD MEMBER RIE: What if you're just raising  
16 your levees because you want to provide more freeboard for  
17 your project?

18 CHIEF ENGINEER BRADLEY: I think that's a change  
19 in the system.

20 BOARD MEMBER RIE: Okay.

21 ENGINEER BRADLEY: I mean you're essentially  
22 raising -- increasing the flood protection in one form or  
23 another.

24 PRESIDENT CARTER: All right.

25 STAFF COUNSEL MORGAN: Can you stand one more

1 minute's worth of comment?

2           PRESIDENT CARTER: Yes.

3           STAFF COUNSEL MORGAN: All right. I'll try to  
4 keep to the minute.

5           I just want to respond to something that Steve  
6 has said and also that the attorneys had said. And it  
7 relates to the liability and the shifting of the risks.  
8 Because as I've discussed with folks -- and I really want  
9 to make this point -- I don't think it's entirely  
10 appropriate for the government to entertain a project that  
11 is going to result in the taking of property. And I'm not  
12 going to reach the conclusion that it does. I'm just  
13 saying that if in fact the government's undertaken a  
14 project or approving a project that it takes property,  
15 then it's appropriate to just wait and let them sue. I  
16 think it's the duty of the government to make reasonable  
17 efforts to ascertain whether such injuries occur and  
18 compensate appropriately. And that's really what's  
19 driving this. This is not a worry about, well, they're  
20 affecting lives, let's go down the road and get away from  
21 liability.

22           If this is a state project, the state's doing  
23 this and it's going to injure people, then the  
24 constitution demands that we compensate those people. And  
25 I think that the government should investigate. That

1 having been said, I think it's pretty clear from what's  
2 been discussed, that there's a lot things that are beyond  
3 what needs to be looked at. There's a lot of stuff that's  
4 very speculative. As Scott Shapiro said, there are a lot  
5 of injuries that are trivial, noncompensable. I think  
6 that's an appropriately thing for the Board to consider.  
7 The Board has lots of ideas in how it determines what is  
8 significant and what is not.

9 PRESIDENT CARTER: Thank you.

10 So, as I stated, we'll keep them working on this.  
11 We will revisit it perhaps again in August.

12 So thank you very much. Thank you all for all of  
13 your comments and insight.

14 On to Item 13, Status of the U.S. Army Corps of  
15 Engineers's Levee Certification Guidelines/Program.

16 Mr. Deering.

17 MR. DEERING: Thank you and good afternoon.

18 Let's see, I -- how do I switch this on?

19 Good afternoon. My name is Mike Deering and I'm  
20 with the Corps of Engineers at the Hydrologic Engineering  
21 Center in Davis.

22 (Thereupon an overhead presentation was

23 Presented as follows.)

24 MR. DEERING: Real quick I'd like to just bring  
25 you up to date as to how the Corps is going to handle

1 requests for levee certification. And right now it's  
2 being compiled in the form of a engineering technical  
3 letter. And this guidance will be going out to the field  
4 soon.

5 --o0o--

6 MR. DEERING: So these are the topics. I think  
7 you've all probably seen the presentation. But I'll go  
8 through definitions so we're all on the same page about  
9 what is in the guidance; roles and responsibilities as far  
10 as the Corps of Engineers and FEMA will be working  
11 together; flood damage, where the methodologies for levee  
12 certification with regard to hydraulics and hydrology and  
13 where those methods came from; the certification guidance  
14 and the schedule of ETL; certification process; and some  
15 of the other topics as far as system approach, the notion  
16 of partial certification. We'll talk about that. And  
17 then a new item that's going to be in the ETL is a notion  
18 of validity period, we'll talk about that, and some of the  
19 technical criteria for certification.

20 --o0o--

21 MR. DEERING: So as we go through the  
22 presentation, there's some definitions again so that we're  
23 all talking about the same thing: Levee system; what  
24 accreditation is, as opposed to certification;  
25 deterministic analyses and probabilistic analyses. And

1 you're all probably familiar with assurance and this  
2 notion of conditional non-exceedance probability. I  
3 understand that you've had discussions about that before.  
4 But we'll go over that again.

5 --o0o--

6 MR. DEERING: This notion of levee system is not  
7 new but it's reiterated and highlighted in the ETL, the  
8 engineering technical letter, and that all certifications  
9 will be based on the levee system approach. And the levee  
10 system basically is all components of the flood reduction  
11 project that contributes to flood protection, including  
12 levees, flood walls, closure structures. Any other items  
13 that contribute to that protection will be assessable and  
14 contained in the documentation for levee certification.

15 --o0o--

16 MR. DEERING: Again, here's the definition of the  
17 Certified Levee System. And it captures the CFR 65.10,  
18 FEMA's criteria for certification. And the notion here is  
19 that for the Corps of Engineers it will require the  
20 signature of a professional registered engineer for that  
21 certification.

22 --o0o--

23 MR. DEERING: So accrediting the levee is FEMA's  
24 responsibility. And what that means then is once they  
25 have a certified levee, they will then accredit that

1 toward the mapping or remapping of the floodplain area.  
2 So FEMA is responsible for accrediting once they have a  
3 certified levee system by a registered professional  
4 engineer.

5 --o0o--

6 MR. DEERING: The notion of deterministic  
7 analysis versus probabilistic, part of the ETL, is based  
8 on the risk analysis methods that you're all aware of;  
9 where other elements such as geotech and structural  
10 valuations are deterministic and these are definitions of  
11 each.

12 --o0o--

13 MR. DEERING: Just real quickly, the requirements  
14 of methodologies for doing the probabilistic analysis of H  
15 and H came from the Corps's movement in their plan  
16 formulation methodologies to a risk analysis. And these  
17 are the documents that back those up and where the methods  
18 and tools for generating the conditional non-exceedance  
19 probability came from.

20 --o0o--

21 MR. DEERING: In those analyses, the outputs,  
22 again because they were based on plan formulation, the  
23 number one purpose was to generate expected annual  
24 damages. But in doing so you would also generate  
25 performance indicators or indices. And one of them is

1 annual exceedance probability and the other is this  
2 conditional non-exceedance probability.

3 --o0o--

4 MR. DEERING: And, that is, for any given event  
5 what is the probability that the levee system will contain  
6 it? So in this case for certification purposes it's the  
7 100-year base flood. And the computation is: What is the  
8 assurance or the percent probability that it will be  
9 contained?

10 --o0o--

11 MR. DEERING: Again, these are just the guidances  
12 that follow down through and how the Corps adopted  
13 risk-based analysis for certification.

14 --o0o--

15 MR. DEERING: And that currently a draft ETL is  
16 being put together to update all that guidance.

17 --o0o--

18 MR. DEERING: Here's the tentative schedule for  
19 release of the ETL. And actually it was just sent -- the  
20 latest version was sent to headquarters yesterday for  
21 their review and release to the field for comment.

22 --o0o--

23 MR. DEERING: Again, the ETL and certification  
24 process requires a systems approach. And the notion of  
25 partial certification, where in the past there may have

1 been letters of certification for pieces of a system, that  
2 will no longer be the case. The whole system will have to  
3 be evaluated for certification purposes.

4 --o0o--

5 MR. DEERING: Here's a real quick overview of the  
6 process that the Corps's requested to do a certification.  
7 Then they would determine the authority and the funding  
8 source for doing the evaluations and documentation,  
9 coordinate the scope of work with the locals and FEMA,  
10 perform the technical analyses and prepare the  
11 documentation. You would have a documentation ITR,  
12 independent technical review, that will be done, and  
13 coordinate the findings and issue letter or, if the system  
14 cannot be certified, show those findings as well.

15 --o0o--

16 MR. DEERING: This is a new notion, although it  
17 isn't new for FEMA. But these certification letters that  
18 the Corps will issue will have a ten-year sunset clause in  
19 it where they will be good for ten years and then another  
20 evaluation or update of a certification documentation will  
21 be done. And this pretty much aligns with the new Corps  
22 policy for inspection, where there will be annual  
23 inspections, there will be five-year periodic inspections,  
24 and then there will be a -- every tenth year there will be  
25 a risk assessment and -- a risk assessment inspection and

1 this certification on the lines with that cycle.

2 --o0o--

3 MR. DEERING: So here's the components for  
4 preparing the documentation. Obviously you collect all  
5 the data that you have about the levee system. And again  
6 it's a combined technical analysis where the H and H is an  
7 analysis performed probabilistic and all other disciplines  
8 deterministic at this point. The idea is that as  
9 probabilistic methods come on line for geotech and  
10 structural evaluations, they will be incorporated into a  
11 new version of the ETL.

12 --o0o--

13 MR. DEERING: And again this is just a laundry  
14 list of things that you might gather up for assisting in  
15 the levee certification.

16 And again here's -- the two highlighted, the red,  
17 are the nexus between the levee inspection and the O&M  
18 process and the levee certification, where you're using  
19 annual and periodic inspection reports and the O&M manual  
20 to assist you in certain certification. But it also  
21 aligns with the levee inspection policy.

22 --o0o--

23 MR. DEERING: The ETL would require certification  
24 site visit as opposed to using annual inspection reports.  
25 There will be a site visit required.

1                                   --o0o--

2                   MR. DEERING:  Again, the probabilistic H and H  
3 analysis, using the discharge frequency stage discharge  
4 both with uncertainty.  And then if you're in a coastal or  
5 a large lake or a situation where you have wind waves,  
6 then there's emerging methods for doing that analysis as  
7 well.  And those methods are coming out of the work from  
8 Katrina.

9                                   --o0o--

10                  MR. DEERING:  So you've seen this -- probably  
11 seen all this before.  Here's the -- on the left is the  
12 discharge exceedance probability with uncertainty, the  
13 middle is the gradient curve or the staged discharge with  
14 uncertainty.  Combined it gives you a stage exceedance  
15 probability curve, with the red being the distribution of  
16 that uncertainty for that stage frequency.  And the  
17 criteria then for certification is that you're able to  
18 contain the base flood, or the .01 event, at least 90  
19 percent of the time.

20                                  --o0o--

21                  MR. DEERING:  So here is that same distribution  
22 of the uncertainty about the stage frequency.  And if you  
23 have a levee that as compared to the three elevations  
24 is -- the top of the levee is a little -- slightly above  
25 Elevation 3, and that exceedance -- that conditional



1 that's a certifiable levee.

2 I just want to that you though, this is draft  
3 methodology and it has not fully been adopted yet.

4 --o0o--

5 MR. DEERING: So all the other disciplines again  
6 are using probabilistic -- or, excuse me -- deterministic  
7 methodology and geotech. We consider overtopping and  
8 slope stability and underseepage, all these other modes of  
9 failure, when determining whether that levee can be  
10 certified or not.

11 --o0o--

12 MR. DEERING: And then of course the other  
13 disciplines would weigh in as well for closure structures,  
14 flood walls. And in this case for the ETL it will also  
15 have to consider the interior flooding and whether there's  
16 residual mapping to be done or whether there's interior  
17 flooding features to -- that would allow the mapping or  
18 removal of the whole area for flooding purposes, FEMA  
19 purposes. So we had to consider interior drainage.

20 --o0o--

21 MR. DEERING: These are just the various  
22 authorities that may be used given the type of levee that  
23 you have. I won't necessarily go through all of them.  
24 But there will be cases where it's difficult to get  
25 funding based on the authority of the type of levees. So

1 that really needs to be scrutinized.

2 --o0o--

3 MR. DEERING: Again, more authorities. You have  
4 those in your handout.

5 --o0o--

6 MR. DEERING: And this slide is -- the real point  
7 of this slide is that the Floodplain Management Services  
8 Program the Corps has cannot be used for certification.  
9 It can be used to help generate data and documentation,  
10 but it cannot end up with certification. So that's just a  
11 note.

12 --o0o--

13 MR. DEERING: Any questions?

14 PRESIDENT CARTER: Thank you, Mr. Deering.

15 Yes, Mr. Hodgkins.

16 VICE-PRESIDENT HODGKINS: Does everybody  
17 understand that?

18 (Laughter.)

19 MR. DEERING: Sorry.

20 VICE-PRESIDENT HODGKINS: I do have a couple  
21 questions.

22 This is for when a local sponsor wants the Corps  
23 to do the certification of the levees?

24 MR. DEERING: Correct.

25 VICE-PRESIDENT HODGKINS: Okay. But if a local

1 sponsor decided he wanted to certify his own levees, then  
2 he wouldn't necessarily have to go through this process?

3 MR. DEERING: That's correct.

4 VICE-PRESIDENT HODGKINS: Okay. I mean, just to  
5 understand, that means the Corps is going to have one  
6 number and local sponsors are going to have a different  
7 number, and you're all going to deal with that. Okay?

8 And then the ten-year life. From the Corps and  
9 FEMA's point of view, as best you know, what happens when  
10 you get to the end of ten years? For instance, the Corps  
11 has no money and the sponsor has no money to pay for  
12 recertification. What happens? Do you go into the  
13 regulatory floodplain? Do you get decertified?

14 MR. DEERING: Well, first of all, a  
15 recertification, because it has been certified once  
16 already, hopefully would not cost a lot of money --

17 VICE-PRESIDENT HODGKINS: Okay.

18 MR. DEERING: -- to redo a certification, because  
19 the package has already generated. It needs to be  
20 checked. Hydrology may need to be checked, which isn't  
21 necessarily a big cost item. So hopefully the cost on a  
22 recertification would not be much. If it isn't  
23 recertified, then the letters void that then after ten  
24 years.

25 VICE-PRESIDENT HODGKINS: It is what?

1 MR. DEERING: It's no longer valid.

2 VICE-PRESIDENT HODGKINS: It is decertified?

3 MR. DEERING: Well, that's for FEMA to say  
4 whether they now not accredit it. But they will no longer  
5 be a certification levee because --

6 VICE-PRESIDENT HODGKINS: So it's important to  
7 understand again accreditation, certification?

8 MR. DEERING: Right.

9 VICE-PRESIDENT HODGKINS: So we don't know what  
10 FEMA will do about the accreditation. But from the  
11 Corps's standpoint if FEMA asks the Corps and the analysis  
12 had not been done, the Corps would say this is not  
13 certified?

14 MR. DEERING: Correct.

15 VICE-PRESIDENT HODGKINS: Thank you.

16 PRESIDENT CARTER: So what happens if FEMA asks  
17 somebody from a state to certify levees but provisionally  
18 accredit them? You don't have to answer that. Sorry.

19 (Laughter.)

20 MR. DEERING. I wasn't here for that discussion.

21 (Laughter.)

22 PRESIDENT CARTER: That's a good thing.

23 (Laughter.)

24 PRESIDENT CARTER: Ms. Rie.

25 BOARD MEMBER RIE: The draft ETL, is that

1 available for public comment?

2 MR. DEERING: It will be hopefully mid-August.  
3 It's going to go out to the field and others for comments.  
4 So, yes, it should be available to you.

5 BOARD MEMBER RIE: And where would the public get  
6 a copy if they were interested in commenting?

7 MR. DEERING: The Sacramento District, Corps of  
8 Engineers.

9 BOARD MEMBER RIE: You just call them up? Will  
10 it be on the website?

11 MR. DEERING: I don't know that. But we could  
12 make it available for them --

13 BOARD MEMBER RIE: Okay.

14 MR. DEERING: -- when it's released for comment.

15 BOARD MEMBER RIE: Okay. Thanks.

16 BOARD MEMBER BURROUGHS: Yeah, I have one  
17 question.

18 You mentioned about the wave action and that it  
19 hadn't been fully adopted yet. Do you have a timeline of  
20 when you expect that to be adopted?

21 MR. DEERING: Well, it will be in the ETL as a  
22 method. But it also in the ETL will be the classic or  
23 historic way to add an incremental levee for waves. So  
24 it's also in the ETL. But the primary criteria for wave  
25 situations -- the overtopping method will not be the

1 primary criteria.

2 BOARD MEMBER BURROUGHS: And then -- this is just  
3 a generic question -- you mentioned something about the  
4 cost not being as much when you go through the  
5 recertification process after ten years. Do you have a  
6 range of what it does cost?

7 MR. DEERING: We've been asked that. And I guess  
8 the -- the easy answer is for a brand new constructed  
9 levee that has all the design materials and construction  
10 documents and the O&M manual is in place and functioning,  
11 that shouldn't cost very much because there's -- in an  
12 atmospherical outcome in trying to -- and covering it with  
13 a certification letter. If you have a very old system  
14 that doesn't have all that documentation, then you need to  
15 do analyses for the documentation to back that  
16 certification letter because that could cost a lot of  
17 money. And so it just varies.

18 BOARD MEMBER BURROUGHS: Do you have any range?

19 MR. DEERING: No, I don't have a range, because a  
20 levee system could be one mile or it could be a thousand  
21 miles.

22 VICE-PRESIDENT HODGKINS: But just for purposes  
23 of helping people understand, "not very much" in your  
24 definition is what, 50,000, 100,000, a half million?

25 MR. DEERING: For the first case where it's just

1 built and we have all the information, it could cost  
2 10,000 or less.

3 VICE-PRESIDENT HODGKINS: So the Corps's going to  
4 review it and introduce a document for \$10,000?

5 I understand nobody knows what it's going to  
6 cost. But I thought we needed a quote on a number just to  
7 have a feeling of what "not very much" was.

8 MR. DEERING: Well, again, if you have all the  
9 information, what "not very much" is, it's kind of hard to  
10 say.

11 But you can see the difference between that and  
12 having to go through borings and redo all your H and H.  
13 That's a lot.

14 PRESIDENT CARTER: The answer is it depends on  
15 how deep your pockets are.

16 Thank you very much, Mr. Deering.

17 Mr. Countryman, did you want to comment on this?

18 MR. COUNTRYMAN: In the interests of time -- Joe  
19 Countryman, MBK Engineers -- I'll make this very short.

20 This probabilistic methodology has a lot of  
21 potential pitfalls in it in the future. Just one example:

22 We went -- we had a project that the Corps had  
23 said had 180-year level of protection. A new report came  
24 out and it dropped to 130-year level of protection. So we  
25 met with the Corps and said, "Why did the level of

1 protection drop on this project?" And they said, "Oh,  
2 under our risk analysis methodology, we added a 5 percent  
3 chance of failure for vegetation and a 6 percent chance of  
4 failure for utilities." And we said, "Well, where are the  
5 utilities?" And they said, "Well, we don't know." And we  
6 said, "What's the basis for the 5 percent failure due to  
7 vegetation?" "Well, we don't know. We just thought that  
8 was a good number."

9           So basically a level of protection for a project  
10 just dropped overnight based on two assumptions without  
11 any documentation or backup for those assumptions.

12           So if that's what risk analysis is about, we can  
13 expect a pretty wild ride during the next few years  
14 until -- I think all those kinds of things will settle out  
15 and they'll be some accepted criteria for assigning these  
16 things. But right now it's a pretty wild ride.

17           PRESIDENT CARTER: Thank you.

18           MR. SHAPIRO: Scott Shapiro again.

19           I just had one question for Mr. Deering. It  
20 wasn't clear to me. Who was making the request after the  
21 ten years and who is paying? Is it the non-federal  
22 sponsor, i.e., Rec Board, the local sponsor as in O&M  
23 agency, or the floodplain manager?

24           MR. DEERING: When I mentioned the process the  
25 Corps would go through, the first item was limit Corps's

1 approach to do a levee certification. And, again, then  
2 you determine the authority. But the standard answer is  
3 that for a levee system that's owned and operated by  
4 federal sponsor, the local sponsor is really required or  
5 responsible for getting the certification. So that would  
6 be paid by the local sponsor.

7 MR. SHAPIRO: I'm sorry. I'm trying to keep it  
8 brief.

9 I'm talking about after the ten years. So, for  
10 example, Three Rivers submitted a certification report,  
11 was recently certified. And we appreciate that very much.  
12 It's a ten-year letter. After ten years, do we have to  
13 reapproach you or will you automatically say, "We're  
14 ready," and if we don't reapproach, then can someone else  
15 reapproach? Can the state approach at that time or the  
16 local floodplain manager approach?

17 MR. DEERING: Well, again, it would be either  
18 original request or -- that is needing the recertification  
19 would be re-requesting after the ten years.

20 SECRETARY DOHERTY: Then what if the original  
21 requestor is gone?

22 MR. DEERING: Then for certification or  
23 recertification, whoever owned that levee or facility  
24 would be requesting it. So it's placed --

25 MR. SHAPIRO: DWR.

1 (Laughter.)

2 GENERAL MANAGER PUNIA: I think that the  
3 project -- the local community, for example, in this case  
4 the Yuba County want the certification and they will be  
5 requesting that they should be certified by the Corps so  
6 that they are not mapped in the FEMA flood hazard maps.

7 PRESIDENT CARTER: Mr. Bradley.

8 CHIEF ENGINEER BRADLEY: Yeah, I think I'll touch  
9 on this a little bit.

10 But how this affects the Board is really not at  
11 all. We're not involved with FEMA certification. We're  
12 not asking for it. Our levees are not FEMA certified. We  
13 have an agreement with the Corps. And our system is sort  
14 of the pass/fail. It's not probabilistic. We don't do  
15 the risk failure analysis on it. It is just a pass/fail  
16 type system.

17 The FEMA certification is really between the  
18 Corps and the locals. And that's a separate program from  
19 the Corps and the Board. And so if a local agency,  
20 typically it's the county or city, wants to have FEMA  
21 certification done by the Corps, then they make that  
22 arrangement with the Corps and have that done.

23 And where we have a conflict or where we have a  
24 problem as a board is the Bear River levee setback. The  
25 Corps has certified that for FEMA-level protection. They

1 have not yet accepted it as a project levee and turned it  
2 over to The Reclamation Board. So all although it may get  
3 FEMA certification, it has not necessarily been approved  
4 by the Corps for a federal project levee.

5           So does that have questions? I mean we're not  
6 really dealing with the certification issue. It is  
7 separate from what the Board addresses or has authority  
8 over. It is really between the Corps and the locals and  
9 it really doesn't have any impact on the regulated Federal  
10 Flood Control Project.

11           PRESIDENT CARTER: Okay. Thank you.

12           Thank you, Mr. Deering.

13           I hesitate to do this at this point, because  
14 we're making up time on our schedule. But we probably  
15 ought to take a ten-minute recess, let people stretch.  
16 And we'll reconvene and continue with Item 14.

17           (Thereupon a recess was taken.)

18           PRESIDENT CARTER: Take your seats please. We'll  
19 continue.

20           All right. Thank you.

21           We just wrapped up Item 13. So now we're  
22 starting with Item 14, The Delta Levee Subventions Program  
23 guidelines.

24           Mr. Mirmazaheri. Welcome.

25           MR. MIRMAZAHERI: Good afternoon, Mr. President,

1 members of the Board.

2 (Thereupon an overhead presentation was  
3 Presented as follows.)

4 MR. MIRMAZAHERI: For the record, my name is Mike  
5 Mirmazaheri. I'm the Program Manager for Delta Levee  
6 Program.

7 It's a pleasure to be here and it's good to be  
8 back. And I'd like to -- before I begin I'd like to  
9 express my sincere thanks and appreciation for the Board's  
10 input in our program. Member Teri Rie's participation in  
11 the subcommittee really has helped us to understand your  
12 concerns better. And I hope that's reflected in my  
13 presentation today.

14 --o0o--

15 MR. MIRMAZAHERI: Today in this briefing I'm  
16 going to talk about a authority, just touch on the goals  
17 of the program, and discuss -- and guidelines, talk about  
18 a process, and historical perspective in terms of funding,  
19 and again funding and some of the issues that we are  
20 discussing internally and also with local districts will  
21 be discussed today.

22 --o0o--

23 MR. MIRMAZAHERI: What I'm hoping is to come back  
24 next meeting and request the Board to take action on a  
25 program. The next Board meeting I'd like to be able to

1 discuss some of the changes that we are internally talking  
2 about, the guidelines, specifically a cap for maintenance  
3 in dollar amounts spent per miles of levees. Also we'd  
4 like to talk about 2007-2008 funding and how we want to  
5 expend that and get approval from the Board to go back to  
6 the program and again some of the proposed projects that  
7 are done.

8 --o0o--

9 MR. MIRMAZAHERI: Originally having the worked  
10 with the Board before, I didn't think there would be an  
11 August meeting, so I was discussing September meeting with  
12 the districts. The districts expressed their concern that  
13 September may be getting to the construction time prior to  
14 the flood season. So they would like to see if this item  
15 can be on the agenda for August if there is an August  
16 meeting.

17 The authority of the program is spelled out in  
18 the Water Code. Water Code recognizes the beneficiaries  
19 at risk and the intention of the legislation, which is to  
20 protect the Delta and minimize the risk of flooding.

21 Water Code just makes -- it asks the district to  
22 pay for first thousand dollars per levee mile of the  
23 expenditures before any reimbursement from this program is  
24 given to them. And the state's share in terms of  
25 reimbursement is limited to 75 percent of the costs. And

1 that depends on how the Board approves -- the Board needs  
2 to approve anything. And once it's done, then the Water  
3 Code requires inspection before any reimbursement is paid  
4 to the local districts.

5 And 8360, long-term habitat improvement, is  
6 another issue that -- another area the Water Code talks  
7 about.

8 --o0o--

9 MR. MIRMAZAHERI: The goal of the program is  
10 obviously reduce the risk to land use and associated  
11 activities, water supply and infrastructure, and be able  
12 to fit in quality care.

13 --o0o--

14 MR. MIRMAZAHERI: We are pretty much working very  
15 closely with CALFED and to -- I know the program is in  
16 line with CALFED's goals and objectives as defined in  
17 Records of Decision and their Levee System Integrity  
18 Program. Also a framework for action, which was done in  
19 2000, requires our program to work with CALFED and develop  
20 performance measures which regularly we'd meet with CALFED  
21 and we discuss all of that as well.

22 --o0o--

23 MR. MIRMAZAHERI: In terms of Board guidelines,  
24 the intent is to build the levees to higher standard.  
25 Again, district will pay first thousand dollars per mile

1 before any reimbursement. And then the work needs to be  
2 qualified before any reimbursement is done. And, once  
3 again, that's no more than 75 percent on the state.

4           The Water Code guidelines basically talks about  
5 maintenance and then also has three different priorities,  
6 priority 1, 2 and 3, that we'll discuss further.

7                               --o0o--

8           MR. MIRMAZAHERI: This slide shows some different  
9 levee cross-sections for agricultural, for urban. And  
10 they all have different side slope and levee slope. And  
11 it all depends on which one is the target for the local  
12 agency to achieve.

13                               --o0o--

14           MR. MIRMAZAHERI: In terms of priorities,  
15 maintenance comes first. And maintenance is limited to  
16 \$15,000 per levee mile. And that's a cap for  
17 reimbursement. And then rehabilitation, we have priority  
18 1, priority 2, and priority 3.

19                               --o0o--

20           MR. MIRMAZAHERI: The next slide, this one,  
21 actually shows it more in schematic, and it's also  
22 included in your package.

23           So I'll just -- since you have it in your  
24 package, I'll continue on.

25                               --o0o--



1 The lowest is 3.8 million and the highest was 5.8 million.  
2 So historically between '97 and 2005, those are the  
3 requests that came to us for maintenance work.

4 In terms of priority 1, it fluctuates between 3.5  
5 million to 5.5 million.

6 --o0o--

7 MR. MIRMAZAHERI: Priority 2, much less than  
8 that, 73,000 to 700,000.

9 --o0o--

10 MR. MIRMAZAHERI: And priority 3 is pretty small  
11 relatively, 116 to 547. And these slides I think intended  
12 to give you a perspective of historically what sort of  
13 application is going to develop out here you've been  
14 receiving.

15 --o0o--

16 MR. MIRMAZAHERI: Mitigation and inspection. The  
17 Water Code 12984 talked about no net long-term losses of  
18 habitat and also programmatic habitat enhancement as part  
19 of the program.

20 As I said before, after completion of work by the  
21 local districts, the inspection is done jointly by DWR and  
22 Fish and Game, and often satisfaction of the water  
23 reimbursement will be made.

24 --o0o--

25 MR. MIRMAZAHERI: This is another source of



1 we are discussing internally and we have talked to the  
2 district. One of them is perhaps raising an existing cap  
3 from \$15,000 a mile to a higher one. This will assist  
4 some of the district who are spending a lot of money on  
5 maintenance. It increased the cap. And then we'll  
6 telephone out to spend more money then on the maintenance.

7           On the average there's about 650 levee miles on  
8 the annual basis are being maintained. And if you'd want  
9 to increase that in terms of economic recovery over the  
10 last ten years, our economist recommends to you a factor  
11 of 1.5 to consider for inflation if we do decide -- the  
12 Board decides to increase that.

13   --o0o--

14           MR. MIRMAZAHERI: This is an example of bringing  
15 more into perspective. If a district spends about  
16 \$500,000 on maintenance -- I just lost that. If they  
17 spend about \$500,000 on maintenance, and assuming they  
18 have 35 miles of levee, the program -- they are only  
19 qualified up to \$525,000 based on \$15,000 per mile as it's  
20 now in existing. And the program will end up paying less  
21 than \$350,000.

22           So as long as what the program pays is less than  
23 what they qualify, which is check year, they're okay.  
24 They can receive that amount.

25           Now, if \$15,000 increases to a higher number, of

1 course the cap will be higher, and it would help those  
2 districts that spent more money. And, again, with this  
3 example, it's not going to make a difference for this  
4 district if they can't raise rates.

5 --o0o--

6 MR. MIRMAZAHERI: For '07-'08 funding and based  
7 on the assumption we continue receiving approximately --  
8 the work for approximately 615 levee miles and again  
9 they'll pay the first thousand dollars per mile and then  
10 reimbursement is no more than 75 percent. At the current  
11 level of 15,000 per mile for maintenance, the program  
12 would have to spend less than \$7 million on maintenance  
13 for reimbursement.

14 If they raise that 15 to 20,000, then the  
15 reimbursement would be slightly less than \$10 million.  
16 And if they raised that to \$25,000, then it would be less  
17 than \$12 million.

18 So this slide will give you a perspective again,  
19 you know, what the rates will do in terms of the level of  
20 funding in the program.

21 --o0o--

22 MR. MIRMAZAHERI: Another issue that we're  
23 discussing is to advance the district for the work they're  
24 doing. This year we have received -- as was included in  
25 your package, the application that we received comes up to

1 more than \$82 million. There's a huge dollar amount, you  
2 know. Of course it's not all for maintenance. There's  
3 maintenance, priority 1, priority 2, and priority 3. And  
4 the districts would like to have some advance.

5           Water Code allows us to provide advance funding  
6 to the districts up to 75 percent of the reimbursement  
7 amount. On the average, last ten years or so, the  
8 applications that we have received, dollar amount, has  
9 been around \$30 million. This year, as I said, it's more  
10 than 82, so almost three times as much. The majority of  
11 the work in the past has been maintenance and some in  
12 priority 1. Priority 2 and priority 3, the program never  
13 had enough funding to recover. And because of it, it is  
14 considered carry-over, has been paid over from past years  
15 and hasn't been paid because it's not -- it's at the  
16 lowest priority.

17           What we are trying to do is we're trying to  
18 develop a procedure to accommodate the need of these  
19 districts and forward advance to them. And we're in the  
20 process of setting a meeting with district -- invite all  
21 the districts to a meeting. A tentative date is August  
22 14. As of now we need to firm it up. It's not confirmed  
23 yet. And once we confirm that, send the letter out to all  
24 the districts and invite them to that.

25           But the purpose of that is to let them know and





1 --o0o--

2 MR. MIRMAZAHERI: Farming of course is protected  
3 through this process. And then habitat enhancement and  
4 protection is another one.

5 --o0o--

6 MR. MIRMAZAHERI: Navigation is also benefiting  
7 from this program because the levees stay intact.

8 --o0o--

9 MR. MIRMAZAHERI: Needless to say, that Delta is  
10 the focus of our political body now. And Governor  
11 Schwarzenegger was in the Delta last week, on Tuesday, the  
12 17th. As you can tell, Lester Snow, as Director, and Dave  
13 Mraz, my boss, was sitting back here and were accompanying  
14 the Governor. And it's been -- there's been a lot of  
15 attention given to Delta for a variety of reasons.

16 So at this time I'll stop. And then if there are  
17 any questions, I will entertain. And hoping that I'll be  
18 able to come back in August and ask for an action by the  
19 Board.

20 Thank you.

21 PRESIDENT CARTER: Any questions for Mr.  
22 Mirmazaheri?

23 BOARD MEMBER RIE: Are you going to bring the  
24 budget for the applications in August or is that going to  
25 come later in the fall?

1           MR. MIRMAZAHERI: Actually that is part of the  
2 package that I've provided to you. In the table that you  
3 have, it pretty much summarizes what we have received so  
4 far and where we are, right.

5           BOARD MEMBER RIE: Okay.

6           MR. MIRMAZAHERI: I think if there's any changes  
7 to that or updates, we'll make. And then bring that back  
8 again for action.

9           BOARD MEMBER RIE: Okay. At the subcommittee we  
10 are discussing raising the cap for maintenance. As you  
11 guys all know, maintenance is really critical for these  
12 levees. And I don't know if it was since 1988, but it's  
13 been a really long time since we've raised the cap on  
14 maintenance. And DWR is doing a lot of actuarial analysis  
15 to see how much is being spent over the years and how much  
16 we need. And I don't know if you want to comment on that.

17           MR. MIRMAZAHERI: The original cap was at 12,500.  
18 And in 1995 I believe it was raised to \$15,000, and that's  
19 about 12 years ago.

20           And we think if the timing is right with -- given  
21 the work that needs to be done and also the financial  
22 capability that program has, more so than before, the  
23 timing is right to help out a district that will end up  
24 having a larger bill and will have to pay for more  
25 maintenance work.

1           So I think raising it to a higher dollar amount  
2 is supported by -- you know, by us at staff level. The  
3 question is, 20,000 or 25,000, you know, using that 1.5  
4 factor that our economist is recommending. I'd leave that  
5 up to the Board. Talking to the district engineers, it  
6 appears that \$20,000 per mile would work fine for them.  
7 They'd be happier if it's 25, but 20 will work as well.

8           BOARD MEMBER RIE: Yeah. So that extra money's  
9 going to pay for a lot more base rock on the levee crown  
10 roads and riprap and whatever they need.

11           So thank you so much, you and Dave Lawson and  
12 Dave Mraz for all your hard work on that.

13           MR. MIRMAZAHERI: Thank you. Thank you for your  
14 input. And we hope to continue receiving Board's input in  
15 the coming months.

16           STAFF COUNSEL MORGAN: Just a reminder to the  
17 Board, this is something that the Water Code requires the  
18 Department to prepare and bring to the Board. And the  
19 Board adopts it and may modify it as they see fit. So  
20 feel free to read this. This is not a fait accompli. You  
21 get to, you know, get a look and see whatever changes that  
22 you think are appropriate for the Board. I know Ms. Rie's  
23 already been working with the Department. But the whole  
24 Board needs to be comfortable with this and decide these  
25 are the priorities that the Board wants to see.

1           PRESIDENT CARTER: Thank you.

2           Any other questions?

3           Thank you, Mr. Mirmazaheri.

4           MR. MIRMAZAHERI: Thank you.

5           PRESIDENT CARTER: Mr. Neudeck, did you want to  
6 comment on this?

7           MR. NEUDECK: Thank you. Chris Neudeck with  
8 Kjeldsen, Sinnock & Neudeck, civil engineers out of  
9 Stockton. We represent a little over two dozen of the  
10 reclamation districts. And I want to thank Mike for the  
11 presentation this afternoon.

12           Of those two dozen reclamation districts, the  
13 majority of which we represent are in the Levees  
14 Subvention Program. I want to indicate to you that the  
15 program that you are responsible for, you should be very  
16 proud of. It's one of the greater programs -- it's one of  
17 the few programs that does levee work annually and has  
18 been responsible for some major flood reductions,  
19 particularly since the post-1986 flood.

20           Of the three areas that Dave -- excuse me -- that  
21 Mike mentioned today, I want to add my support,  
22 particularly on the maintenance cap. I think we spoke,  
23 kind of, some of the reasons why the maintenance cap needs  
24 to be raised.

25           One of the major areas is just the cost of doing

1 business. The program is now made the responsibility of  
2 the districts to comply with what's known as labor  
3 compliance program, which basically requires the local  
4 districts to be hiring prevailing wage rate contractors  
5 that do levee maintenance work. In the past a lot of that  
6 work was done with farm labor. And the cost of doing  
7 business has now either tripled or quadrupled to do that  
8 very same work. So the cost of doing business has gone up  
9 substantially, along with just the cost of doing  
10 construction. So that somewhat adds to that additional  
11 cost of doing maintenance.

12           Furthermore, we do have some districts with very  
13 few miles. They're penalized as a result of that, because  
14 the cost of maintenance of the system with the few miles  
15 they have doesn't always equate.

16           The second area of advances, we're very interest  
17 in that. The program has had it within it all along.  
18 We've been patient. The opportunities now come where the  
19 program is funded to a level we believe the advances will  
20 work. Whereby we do have districts that are in the  
21 special projects side of the program, we've been fortunate  
22 to have advances. And that's offered those districts and  
23 those areas with the special projects side of the program  
24 an opportunity to do larger projects. Whereby they had a  
25 limited amount of money, having that funding stream come

1 in earlier allowed them to finance larger projects. The  
2 same would go with this.

3           So by upgrading the maintenance cap, the money  
4 hopefully will become available on an annualized basis and  
5 then it advances, we can get started on some larger  
6 projects. As you can see, we've reacted to the larger  
7 budget, we've increased our application amounts, and we  
8 anticipate some pretty substantial projects here in the  
9 coming years.

10           The final one was ability to pay. The ability  
11 pay is a tough question. That's always been one hard to  
12 resolve. We're interested to see how it comes out. We'll  
13 participate. We know there's been ability to pay studies  
14 with the special projects side of the house in the past.  
15 The resultant answer out of those is always a little  
16 bit -- makes us curious as to how you come up with that.  
17 But we will participate to whatever level necessary.

18           Otherwise I just wanted to offer my support for  
19 the program and also for the Department and their efforts.

20           Any questions?

21           VICE-PRESIDENT HODGKINS: Chris, how did the  
22 requirement to pay prevailing wage come about?

23           MR. NEUDECK: When the program instituted the  
24 Labor Compliance Program, which I think came about -- oh,  
25 it's been within the last five years -- it requires either

1 you do work with district forces on district payroll or  
2 hire contractors that must comply with the Labor  
3 Compliance Program.

4 VICE-PRESIDENT HODGKINS: So along with the state  
5 money came a requirement to pay people better?

6 MR. NEUDECK: That's correct.

7 VICE-PRESIDENT HODGKINS: Okay.

8 BOARD MEMBER RIE: Could I have one question?

9 MR. NEUDECK: Sure.

10 BOARD MEMBER RIE: DWR staff is looking at  
11 raising the cap to 20,000 or 25,000, somewhere in that  
12 range. Do you have a recommendation?

13 MR. NEUDECK: Well, we had the same debate with  
14 Mike and his staff. And initially Gilbert Cosio with MBK  
15 and myself with our firm said -- indicated 20 would be a  
16 good starting point; 25 would give us some life. Since we  
17 don't review this very often, such as the previous time,  
18 we kind of leaned more towards the 25. Depend upon when  
19 the list would be reevaluated.

20 We are doing much more aggressive maintenance.  
21 Particularly as, you know, Corps's vegetation guidelines  
22 are coming down, we're going to be doing probably a lot  
23 more maintenance on vegetation than we have in the past.  
24 And we're all recognizing that's really where, you know,  
25 the whole aspect of flood control comes down from a

1 maintenance perspective.

2           So I think these districts as a general rule are  
3 maintaining levees pretty aggressively.

4           So we would encourage you to increase that as far  
5 as possible. We don't have the actuaries in front of us;  
6 and we would obviously, you know, look to those as being  
7 helpful and looking as to what we've done in the past. I  
8 think that's a good record.

9           But we will increase it. I mean, you know, with  
10 the greater amount of money you will likely see kind of a  
11 resurgence.

12           The other thing is the program is not -- we  
13 haven't had a consistent level of funding, so it's hard  
14 for these reclamation districts to proactively budget not  
15 knowing whether the funding's going to be available. Now  
16 that we know there's three years of funding available,  
17 you'll see the claims at the year's end probably increase  
18 just as a result that long that they can proactively  
19 budget those funds being returned. Most cases these  
20 districts when they come down to looking at their budget,  
21 they pretty much minimize the amount of reimbursement  
22 anticipated from the subventions program to more or less  
23 protect their budget. So if they get a large  
24 reimbursement, break it down and go back to the levee  
25 fund. If not, then they've protected their budgetary

1 process.

2 BOARD MEMBER RIE: Thank you.

3 MR. NEUDECK: Thank you.

4 PRESIDENT CARTER: Thank you.

5 Mr. Cosio.

6 MR. COSIO: Thank you, President Carter, members  
7 of the Board. My name is Gilbert Cosio. I'm with MBK  
8 Engineers.

9 Similar to Mr. Neudeck's company, our firm  
10 represents about the same number of levee districts.  
11 Between our two firms we represent probably 75 or 80  
12 percent of all of the participants in the subventions  
13 program.

14 I don't want to go into all of the details Mr.  
15 Neudeck did, but I want to echo my support of all those.

16 I also want to describe, you know, the  
17 participation of our clients and the effort they put into  
18 your program. Since 1988 there's been about \$200 million  
19 spent on levees. The cost share's at about 55 percent  
20 state levee program and 45 percent local districts, which  
21 are the farmers out there.

22 So even though years that we don't have 75  
23 percent reimbursement, these farmers are out there doing  
24 their due diligence and getting that work done regardless  
25 of whether the full funding is there or not.

1           Right now with the new program, it's essentially  
2 quadrupled the amount of money we've had in any one year.  
3 And so in doing that, it's going to put a lot of stress  
4 and strain on not only our staff at our firms but also  
5 your DWR staff, administrator of the program, and Fish and  
6 Game. And as a result, we're going to be turning to you  
7 fairly quickly to make some decisions that have to be made  
8 to clarify how we're going to work under the expanded  
9 amount of money that we've got under the program.

10           So I'm just here to kind of, you know, let you  
11 know how -- what's going to become of that in the next  
12 months or we're going to be coming to you quite often and  
13 making sure that we can get these procedures clarified.  
14 So if we can expand our maintenance limits, that's great.  
15 And the key is also getting some advance money, because  
16 any money that we get advanced we can alleviate having to  
17 borrow money. And every time you borrow money and pay  
18 interest, that's a lot less contribution we can make to  
19 the program because -- amount of work we can do.

20           Thank you.

21           PRESIDENT CARTER: Thank you.

22           Anything else?

23           Very good. Thank you very much.

24           Moving on, Item 15: Does the Definition of a  
25 Levee need to be Redefined the Board's Regulations?

1 Ms. Finch.

2 STAFF COUNSEL FINCH: Good afternoon, President  
3 Carter and members of the Board. Nice to see you today.

4 The reason we're taking a look at the regulations  
5 today is in light of the Superior Court's ruling in NRDC  
6 versus the Reclamation Board. And in that case you may  
7 recall that the NRDC challenged the permit on two bases:  
8 One is that the Board did not comply with CEQA; and the  
9 other one, that the Board did not follow its own  
10 regulations.

11 And then -- and also the Board did prevail in the  
12 CEQA area, where it was found -- the Court did find that  
13 we did follow CEQA. But then the Court also had some  
14 issues with how we applied the regulations to this permit.

15 And the Court expressly was concerned about  
16 specific interpretations we had, one of which that we  
17 allowed a partial easement over a levee; the next, that  
18 the structures were allowed on portions of certain types  
19 of levees. Even though structures are allowed through  
20 variances, this wasn't done through a variance process.

21 And so this ruling showed that our regulations as  
22 they are written are open to different interpretations.

23 And so to give you some background on this  
24 project, as you -- I know you recall River Islands  
25 approached the Board, and wanted up to do a project where

1 we have the Corps project here and they wanted to build an  
2 internal project quite a distance away from the federal  
3 flood control works; and then at some point in between to  
4 put fill between the two levees. And what the Board staff  
5 said was the requirements were that the Board would  
6 require an easement over any works that may affect the  
7 federal flood control system, but that anything far enough  
8 away there was no regulatory requirements for that. And  
9 it was decided that the internal levee was far enough  
10 away.

11 But anything that the Board had a maintenance  
12 obligation to the Corps over, which is the  
13 federal -- generally the federal levee plus the ten feet  
14 beyond the levee and plus any additional area the Board  
15 determined that may affect the flood control works, the  
16 Board could require some sort of easement.

17 And so as applied to this project, as I  
18 mentioned, the internal levee was considered far enough  
19 away from the federal works, that there was no regulatory  
20 necessity of any permitting from the Board. But when the  
21 fill was placed against the federal levee, there did need  
22 to be part of a permitting process for that.

23 And so the way the Board did this, you, the  
24 Board, is to require two easements. And one was Zone A  
25 easement, which was the standard easement of the levee

1 plus ten feet, and then the Zone B easement was an  
2 excavation easement in order to access the toe of the  
3 federal levee that was now covered with fill. So if there  
4 was ever a need to access that toe for maintenance or  
5 operations, the Board had a right to go down through this  
6 private property and access that.

7           And so those permit conditions were challenged in  
8 court, and the court decisions didn't agree with our  
9 interpretation of the regulations. And one, the Court  
10 said that our regulations do not allow for easements over  
11 portions of levees, it's only over a whole levee; and that  
12 the regulations say you can only have structures on levees  
13 through variances, as I mentioned. And that the fact we  
14 said that the internal levee was far enough away and  
15 didn't affect the federal flood control works so we didn't  
16 need any sort of permitting for structures over there, the  
17 Court said no. You know, you look at a levee, it's toe to  
18 toe, it's a levee section. The Court could see with the  
19 fill it was a really big levee, but toe to toe we need to  
20 regulate the whole levee.

21           And so there are a lot of issues that come up  
22 with that for regulating this project -- future projects  
23 finding toes. And where the federal levee intersects the  
24 ground, sometimes it's clear and sometimes it's not clear.  
25 And the court decision really did shed light on the fact

1 that we need to address what we want to do about it.

2           And there are three possible ways the Board can  
3 proceed. One is make no changes to the regulations; two  
4 is modify the existing regulations; or, three, add new  
5 regulations.

6           And the pros and cons of not changing the  
7 regulations. And probably if someone wanted to build on a  
8 levee, it would require a variance and then some sort of  
9 flowage easement. And I don't know, Steve, if you want to  
10 add anything to that. That would be a way that the Board  
11 could deal with that.

12           And the pro is some people could consider their  
13 flexibility in leaving the regulations the way they are.  
14 And some of the cons are that another Court could come  
15 along and make a decision similar to the Court in NRDC.  
16 And then also applicants may not desire to have a flowage  
17 easement over their properties, especially when there are  
18 structures.

19           Then an additional aspect is now the Board is  
20 required to regulate entire levees beyond what is needed  
21 for protection of the federal control works. And so it's  
22 not necessarily always clear where that jurisdiction  
23 regulatory requirement ends because, as you all know, not  
24 all levees are well maintained with the nice little levee  
25 toe that you could see. There's, you know, fill on top of

1 the them or some slough sloughing off and such things  
2 where it's not necessarily identifiable like with the West  
3 Sac situation where there's dredge material that's piled  
4 up over a hundred years. It's just not always clear where  
5 that is.

6           And then also there is an aspect that these  
7 regulations are not as flexible as potentially modifying  
8 them. For example, the Corps potentially is changing its  
9 easement requirement to 15 feet. And if our regulations  
10 say we can ask for a 10-foot easement, then there's not  
11 necessarily flexibility in the regulations as they stand  
12 to be consistent with the Corps if they make this change.

13           And if we modify the regulations, a pro of that  
14 is we can look at the different regulations that the Court  
15 addressed in this lawsuit and read them together in a new  
16 way, a way that functions better for the Board and  
17 applicants in permits that make sense to the ways that we  
18 need to regulate levees.

19           And that could include easements, the definition  
20 of toes, structures on levees, all these different things.

21           The detriment is if we don't do it properly,  
22 there's a potential for more confusion. And if we add a  
23 new regulatory provision or provisions and we could just  
24 take what the Court addressed specifically, that we permit  
25 easements only over portions of levees, we allow

1 structures on levees under certain circumstances where the  
2 structures would not affect federal flood control works,  
3 define "toe," these type of things. And one pro of that  
4 is it's precise and addresses specific issues. And the  
5 con, as the other one, it's not done properly, it could  
6 add to confusion.

7           And so at this point that's the end of the  
8 issue -- the presentation of the issue. And staff's  
9 recommendation is that the Board directs the staff, both  
10 legal and engineering, to do additional work in  
11 determining the appropriate and necessary regulatory  
12 changes, whether it's modifying existing regulations or  
13 drafting new regulations or some sort of hybrid, and to  
14 bring -- come back to the Board when we're ready in the  
15 next couple months with new language.

16           Any questions?

17           PRESIDENT CARTER: So you're recommending Option  
18 2 or 3, but you do not recommend do nothing?

19           STAFF COUNSEL FINCH: Correct, because there's  
20 too much ambiguity.

21           SECRETARY DOHERTY: Pardon. You're directing the  
22 staff to do what?

23           STAFF COUNSEL FINCH: That you would ask us to do  
24 further work in vetting what type of changes would be  
25 necessary to clarify the regulations regarding easements,

1 the toe of the levee, and structures on levees that would  
2 allow flexibility.

3 SECRETARY DOHERTY: So it's primarily in what we  
4 have a problem with would be the structures on the levees,  
5 right? It wouldn't tell them the toe or --

6 STAFF COUNSEL FINCH: Right. Well, what happened  
7 with this lawsuit is -- now, wasn't it a 300-foot-wide  
8 levee?

9 SECRETARY DOHERTY: Yes.

10 STAFF COUNSEL FINCH: The ultimate levee was 300  
11 feet wide.

12 And after the federal levee and the two  
13 easements, there was a lot of property that did not affect  
14 the flood control works. And so the position of the Board  
15 was, "Go ahead and do what you want way over there because  
16 it doesn't affect us." Because of the Court decision, we  
17 would have to regulate those houses way out over there.  
18 And that one structure -- and that's not necessarily  
19 required -- and that would create its own set of problems  
20 potentially.

21 SECRETARY DOHERTY: So that puts us in the  
22 housing business.

23 STAFF COUNSEL FINCH: Could be, yeah. And if we  
24 could redefine -- if it ends up where a levee is defined  
25 as toe to toe and it's very big, we can say, "Okay, well

1 if that's the levee, that's fine, but we only need  
2 easements for these sections." And that's not allowed  
3 under the current regulations.

4 BOARD MEMBER RIE: You know, I don't think the  
5 issue is putting structures or houses on levees, because  
6 the Board can do that. There's a provision in the  
7 regulations where we allow variances and we approve  
8 permits for houses on the waterside of the levee all the  
9 time -- well, not all the time, but we have done it.

10 (Laughter.)

11 BOARD MEMBER RIE: And so -- and that's already  
12 taken care of in the regulations. But I think what's at  
13 issue here is how do you define the easement. And I know  
14 that the staff probably struggled with this particular  
15 issue, because you have the Zone A and the Zone B and --  
16 was there a Zone C?

17 CHIEF ENGINEER BRADLEY: (Shakes head.)

18 BOARD MEMBER RIE: So we have two zones. So the  
19 fact that you had fill behind a levee it made it very  
20 difficult to define what actually we needed. And I think  
21 the first time the Board approved this, we asked for 45  
22 feet without a Zone B. And then the second time or the  
23 third time we approved it, it was 60 feet with a Zone B.

24 So I think what we need to define is what  
25 easements are we going to require when we have a levee

1 that is not your standard, you know, waterside slope, flat  
2 crown and then it goes down to a landside slope. And I  
3 think we're going to see more and more of these, where  
4 applicants want to fill behind the levee, and they want to  
5 have their structures well above the 100-year or 200-year  
6 floodplain. So I think we need to actually draw one of  
7 these pictures and the regulations that show fill behind  
8 the levee and what easements we want with that fill.

9           STAFF COUNSEL FINCH: And that is one approach.  
10 I believe that ultimately the second excavation easement  
11 was based on OSHA standards where -- so it would be a safe  
12 way to excavate.

13           And the pro of your suggestion is it would be  
14 very clear. But once again, there may be less flexibility  
15 because there are so -- you know, as we've heard today,  
16 there's so many different issues that come up with levees,  
17 ones that are urban, ones that are rural, ones that have  
18 been maintained, they haven't, they moved. And so if we  
19 could draft, and perhaps a hybrid of that saying, "In this  
20 situation these are the standards." But that language as  
21 well that allows the Board and staff to issue a permit  
22 that's specific to each project.

23           And also I'd like to mention something about the  
24 variance. It's true, we can put structures on levees  
25 through a variance. But the ones that -- the concerns

1 with that is we still then must regulate the whole levee.

2 And does the Board want to regulate the whole levee?

3           And so if we have it -- if the Board chooses a  
4 different way to regulate structures on levees, and say  
5 you can put homes structures over there because we don't  
6 need control over that, that's another possible way to  
7 deal with structures on levees without a variance, which  
8 would enhance and give more flexibility.

9           BOARD MEMBER RIE: I don't know about you guys  
10 over there, but I don't think we want to regulate levees  
11 that go on forever.

12           STAFF COUNSEL FINCH: Right.

13           BOARD MEMBER RIE: I think we want to regulate  
14 what we need as part of the State Plan of Flood Control  
15 and that's it.

16           So I think you can put some regulations or add  
17 regulations in Title 23 that give the Board flexibility  
18 but at the same time give a little direction to applicants  
19 and the courts and, you know, whoever else.

20           STAFF COUNSEL FINCH: I think that's possible.

21           PRESIDENT CARTER: I think that's what the  
22 recommendation is, is to modify or add.

23           Any other questions for Ms. Finch?

24           STAFF COUNSEL FINCH: I would like -- I'm  
25 sorry -- just add one brief thing about the regulatory

1 process. That when we -- staff comes back with proposed  
2 regulations, it's not one bite at the apple. You can --  
3 the Board can say whether they like it -- ways that the  
4 Board would like to change it and we can go back and work  
5 on it. Because the rule-making process doesn't begin  
6 until we file a notice of rule making that you want to  
7 change our regulations. And then certain things fall --  
8 timelines start happening. But before that time, we can  
9 have this back-and-forth discussion

10 PRESIDENT CARTER: All right. Mr. Washburn, did  
11 you want to comment on this?

12 MR. WASHBURN: Yes, I did.

13 Thank you. Tim Washburn again, SAFCA counsel.

14 I would like to support the recommendation that  
15 the Board take a look at either adding or modifying  
16 existing regulations. But I offer maybe four examples  
17 where we're going to run into some issues with you. As  
18 you will hear next month when we expect to issue a draft  
19 EIR on our next phase of the Natomas project, we're  
20 contemplating construction of what we're calling an  
21 adjacent setback levee, a levee that's connected to but  
22 set back from the Garden Highway, precisely so that we can  
23 avoid what may be a long and debilitating struggle over  
24 what constitutes an encroachment along that Garden Highway  
25 under the Corps's new white paper. And we are going to be

1 looking for some flexibility in how we manage the  
2 circumstance that we collectively had created for  
3 ourselves out there. And I'm not entirely familiar with  
4 the ruling in this case. But we're going to be needing  
5 some flexibility for the Board to be able to designate  
6 that which it considers to be the levee for purposes of  
7 regulation under Title 23. And having the flexibility to  
8 designate that portion of the physical structure that you  
9 say constitutes the project levee from our point of view  
10 will be very important.

11           A couple of other examples. The city is  
12 considering a large project along the American River Town  
13 ship 9, not dissimilar to what this project is, you've  
14 just mentioned, Teri, it's a, you know, build up to and  
15 back from the levee structures, roadways, et cetera, for  
16 putting people up so that they can see the American River.  
17 And it's a substantial build-back project, which we  
18 encourage because it will make the levees a lot stronger.  
19 But we're going to run into these same problems of how do  
20 encourage somebody to do that, which is going to add to  
21 the strength of the flood control project, but they're not  
22 going to want to get involved in the same difficult  
23 regulatory issues that have arisen in this project because  
24 of the inability of the flood control regulators to  
25 designate that portion of the structure that we need to

1 regulate.

2           Third example along the Sacramento River, the  
3 docks project. They're planning to do the same thing down  
4 along the Sacramento River just upstream of the Pioneer  
5 Bridge, build back -- build up to the height of the levee,  
6 build back 75 or 100 feet and use that space for public  
7 space. It will also serve to strengthen that levee. It's  
8 going to be another case of where it's going to be  
9 important for the flood control interests to be able to  
10 designate precisely the areas that it needs to regulate.

11           And then, finally, although unfortunately we  
12 haven't been able to bring to this Board our Sacramento  
13 River flood control -- or, you know, riverfront  
14 guidelines. There are innumerable issues associated with  
15 riverfront structures on levees that need clarification,  
16 that if there were an opportunity in the course of looking  
17 at the current regs to do that would be extremely helpful.  
18 And we could benefit from a lot of good work that went on  
19 in that task force. Steve participated in it. But, you  
20 know, three hard years of work that could be taken  
21 advantage of if there were an opportunity to do so.

22           So I want to strongly support the idea of taking  
23 a look at what could we usefully do with the current  
24 regulations to anticipate these kinds of developments that  
25 will be coming to the Board in the next few years.

1 Thank you.

2 PRESIDENT CARTER: Thank you.

3 Any comments from the Board?

4 Is there --

5 BOARD MEMBER RIE: I have a question.

6 How long does the rule-making process -- this is  
7 for Nancy. Sorry. How long does the rule-making process  
8 take?

9 STAFF COUNSEL FINCH: There's two components.

10 One is how long it takes us to draft regulations that we  
11 find satisfactory. And that could take a couple months.  
12 And then once we file a notice of rule-making, that desire  
13 to begin the rule-making process, there's a mandatory  
14 45-day public comment period, under which time we would  
15 have a hearing which could be just one item for the  
16 Reclamation Board. And depending on the type of comments  
17 we receive, if there's significant comments where we have  
18 to make major changes, then that would trigger another  
19 45-day comment period. And if they're less significant  
20 there'd be a 15-day comment period. And then if they're  
21 minor, then it could go on.

22 And once it goes to -- the regulations arrive at  
23 the Office of Administrative Law, it would be four to six  
24 months. So it could be ten months to a year. Around a  
25 year, I would say.

1           BOARD MEMBER RIE: Do the regulations have to go  
2 back to the Legislature?

3           STAFF COUNSEL FINCH: No, they don't.

4           BOARD MEMBER RIE: So we approve the regulations  
5 and then we send it off. Assuming we get through the  
6 public hearings and approve it, we send it off to the  
7 office of Law?

8           STAFF COUNSEL FINCH: You know, I can't recall  
9 where we send them ultimately. They get published with  
10 the other regulations January 1st, I believe. I can't  
11 remember that far down.

12          BOARD MEMBER RIE: Okay.

13          VICE-PRESIDENT HODGKINS: Nancy, once they go  
14 over to the OAL, is there more process there, more public  
15 process? What happens over there?

16          STAFF COUNSEL FINCH: Over there they -- their  
17 attorneys review it. And then they might send it back to  
18 us if they find an issue with it.

19          VICE-PRESIDENT HODGKINS: But that's it; they  
20 don't go into hearings on it and public --

21          STAFF COUNSEL FINCH: Right. The public process  
22 is with us, not over there at Office of Administrative  
23 Law.

24          VICE-PRESIDENT HODGKINS: Thank you.

25          STAFF COUNSEL FINCH: And I suppose it depends on

1 their comments to us.

2 VICE-PRESIDENT HODGKINS: I guess the second  
3 question is: Do we need to approve the staff's  
4 recommendation for them to go forward?

5 PRESIDENT CARTER: I think we just need a general  
6 consensus to direct staff to go ahead on that, because  
7 we're -- well, go ahead. I'm don't think any action on  
8 anything specific right now. All we're doing is directing  
9 staff to do some more work to bring back to the Board for  
10 future consideration.

11 VICE-PRESIDENT HODGKINS: I'm worried a little  
12 bit about Mr. Washburn, his interest in getting into other  
13 areas and potentially taking a lot of staff time to  
14 address this. But I think that's something to deal with  
15 later on.

16 PRESIDENT CARTER: Right. So is there -- there's  
17 general consensus that we ought to ask the staff to  
18 continue and pursue additional work to clarify, then  
19 either add or modify to the regulations to clarify the  
20 easements or the structures and the toe and definition of  
21 the levee?

22 SECRETARY DOHERTY: In light of what's proposed  
23 coming down the pike, I think that we definitely need to  
24 consider this.

25 PRESIDENT CARTER: Anybody have a problem

1 continuing?

2 So directed?

3 BOARD MEMBER RIE: Sounds like a great idea.

4 STAFF COUNSEL FINCH: Thank you.

5 PRESIDENT CARTER: Now we're on to Item 16, Board  
6 Comments and Task Leader Reports.

7 Do we have any task leader reports? We'll do  
8 those first.

9 VICE-PRESIDENT HODGKINS: I don't have any. I  
10 mean I think we stand on ours as part of the business.

11 But I would like to know, the task force that's  
12 dealing with improved relationship between the resource  
13 agencies and the Department of Water Resources, is that  
14 making any progress?

15 PRESIDENT CARTER: You're talking about the  
16 Interagency Collaborative --

17 VICE-PRESIDENT HODGKINS: Yeah, that's the one.  
18 Thank you.

19 PRESIDENT CARTER: Rose Marie.

20 BOARD MEMBER BURROUGHS: To my knowledge I did  
21 not get notice of the meeting and I believe that Jay said  
22 he was going to be attending. However, I would like to be  
23 on record that I do want information on it. I do want to  
24 attend it.

25 GENERAL MANAGER PUNIA: The Board staff attended.

1 And Board Member Rose Marie was able to attend the one  
2 meeting, I think that was March or April's meeting. And  
3 then Dan and myself, we're attending the meeting. But  
4 we'll make sure that the Board members get that  
5 information from that meeting.

6 PRESIDENT CARTER: How many times has that group  
7 gotten together since March?

8 GENERAL MANAGER PUNIA: I attended one meeting  
9 and Dan -- I was on vacation I think when this month's  
10 meeting happened. I need to check with Dan if he attended  
11 that meeting.

12 SUPERVISING ENGINEER FUA: I did not attend. But  
13 they hold their meeting monthly.

14 PRESIDENT CARTER: Monthly. Okay.

15 So somehow -- and I've made this request before.  
16 But if they're having monthly meetings, Rose Marie needs  
17 to get monthly notices that those are happening on a  
18 timely basis. And she says she's not getting any. So  
19 that needs to happen either via E-mail, snail mail, or a  
20 phone call. But it needs to happen without fail. Okay?

21 GENERAL MANAGER PUNIA: Will do.

22 SUPERVISING ENGINEER FUA: I will ask the  
23 organizer of that meeting to include Rose Marie's E-mail  
24 to their notification.

25 PRESIDENT CARTER: Okay. And my experience is

1 that E-mail is sometimes not enough, so let's follow up  
2 with a phone call.

3 SUPERVISING ENGINEER FUA: (Nods head.)

4 PRESIDENT CARTER: Any other task leader reports?

5 Okay. Any comments the Board wishes to make,  
6 general?

7 BOARD MEMBER BURROUGHS: I have a comment and a  
8 request. I'm not really sure exactly how to word this.  
9 But my intention would be that the Board direct Mr. Punia  
10 to send a letter to TRLIA to request a presentation on the  
11 soil samples with an engineer to describe what they've  
12 had. One of the questions I wanted to know also is, has  
13 the Corps reviewed the soil samples? Another question is  
14 in regards to condemnation of land, has it been offered to  
15 buy and lease back to the farmers?

16 And to follow up on Lady Bug's question earlier  
17 today, and I would need help with this in wording, how to  
18 ensure the Board from TRLIA that the funding that was  
19 initially guaranteed is still where it needs to be.

20 PRESIDENT CARTER: So, Rose Marie, you're  
21 suggesting that -- or you're requesting that General  
22 Manager Punia send a letter to Three Rivers asking for the  
23 results of the soil samples and whether or not the Corps's  
24 reviewed those; asking about if there's been any offers --  
25 I don't know if there have been any offers on land yet in

1 terms of acquisitions for -- you're speaking specifically  
2 of the Feather River setback?

3 BOARD MEMBER BURROUGHS: Yes, uh-huh.

4 PRESIDENT CARTER: -- and what the terms of those  
5 are. We can ask that question.

6 BOARD MEMBER BURROUGHS: Yes, in regards to the  
7 borrow pit.

8 PRESIDENT CARTER: Okay. And then if the funding  
9 is still in place.

10 Okay. Can you do that?

11 GENERAL MANAGER PUNIA: Yes, will do.

12 PRESIDENT CARTER: Okay. And you'll share those  
13 responses with the Board on a timely basis?

14 GENERAL MANAGER PUNIA: Yes.

15 PRESIDENT CARTER: Any other comments?

16 Mr. Hodgkins.

17 VICE-PRESIDENT HODGKINS: I was going to talk  
18 about our agenda. I think for those of you who are left,  
19 you need to understand that in an effort to help staff  
20 here deal with all of these, we've been to the point where  
21 the Board is directing staff, if you don't have the  
22 information in a timely way -- and I thought we were going  
23 to look at some specific guidelines at this meeting,  
24 although I don't see them on the agenda -- then your item  
25 is just not going to make it on the agenda. We cannot

1 continue to ask staff to deal with last-minute information  
2 that comes in and try and get an item on the agenda. We  
3 need to see the staff report, so does the public, in time.  
4 And so that hasn't happened. And I think you're going to  
5 see it more in the future.

6           So I'm going to encourage you to make contact  
7 earlier when you've got an item that's going to be on the  
8 agenda and get a clear understanding of what and when  
9 staff needs the various documents that they're going to  
10 need from you in order to put that item on the agenda.

11           PRESIDENT CARTER: That is on the agenda today.  
12 It's under 18A.

13           VICE-PRESIDENT HODGKINS: Okay. Sorry about  
14 that.

15           PRESIDENT CARTER: So we will be discussing that.  
16 We will be trying to identify specific timing deadlines as  
17 a general rule. And so we will discuss that.

18           Report of the Activities of the General Manager.

19           GENERAL MANAGER PUNIA: Jay Punia. I have a few  
20 items of interest to the Board.

21           We are working on a budget change proposal, Eric  
22 Butler is taking the lead on this, for Fiscal Year  
23 '08-'09. We have discussed at a staff level, and we are  
24 requesting two new engineering positions and one office  
25 technician's position for the Fiscal Year '08-'09. And

1 these positions we are requesting will be in addition to  
2 two positions we got in Fiscal Year '07-'08. And those  
3 two positions are -- one position is already filled. Eric  
4 Butler, we added to our staff.

5           And once the budget is passed, we will be hiring  
6 a new Associate Government Program Analyst or a Staff  
7 Service Analyst. We are at the staff level considering  
8 whether we should bring a new person at an associate level  
9 or at a staff service level. At the present thinking is  
10 that we may downgrade the position to a Staff Service  
11 Analyst and hire at that level, and then later on we can  
12 promote that person to the associate level.

13           BOARD MEMBER RIE: Jay?

14           GENERAL MANAGER PUNIA: Yes.

15           BOARD MEMBER RIE: Can we also request the three  
16 or four hydrologists also?

17           GENERAL MANAGER PUNIA: I think we -- the  
18 likelihood of getting approval for -- the way the present  
19 setup is that we rely upon DWR to provide the technical  
20 services. Whereas we coordinate what we need in  
21 engineering staff to direct and coordinate with DWR. If  
22 the Board wishes, we can try. But the likelihood of  
23 getting additional positions is very difficult. I think  
24 that the -- our concept paper got approved because we  
25 tried the additional workload -- our justification was in

1 our concept paper that due to this additional bond funding  
2 there will be a lot of additional projects similar to  
3 TRLIA and SAFCA projects, so that we need additional  
4 resources to process these type of applications.

5           So we can try. But the likelihood of getting  
6 those type of position is very remote.

7           BOARD MEMBER RIE: Well, considering DWR is  
8 increasing their budget from 82 million to 850 million and  
9 they're adding 110 new engineers -- that was 110 new  
10 engineers -- I think we should go ahead and make the  
11 request for some of those engineers to come over and help  
12 the Rec Board. And if it gets denied, it gets denied.  
13 But I think we should go ahead and make the request.

14           BOARD MEMBER BURROUGHS: I concur with that.

15           PRESIDENT CARTER: I agree. It's kind of like  
16 the analogy that we were talking about earlier about what  
17 is significant impact. And, you know, before the budget  
18 was 84, it was less than 26 million. And we still have  
19 the same -- we have more staff than we did then, but not  
20 significantly more.

21           So we need -- just going through the agenda today  
22 and looking at all that's on our plate and all that's  
23 coming before us, we need to think in an order of  
24 magnitude greater in terms of numbers of staff than what  
25 we're thinking right now.

1           GENERAL MANAGER PUNIA: We'll check the process.  
2 The way the system is set up for that, we have to get out  
3 our concept papers approved from the Resources Agency.  
4 When we submitted a concept paper, we asked for these  
5 three positions. We'll check if we can revise that  
6 concept paper to add additional positions.

7           Mike is shaking his head. I doubt it if we --

8           SENIOR ENGINEER BUTLER: Next year.

9           GENERAL MANAGER PUNIA: Most like we can do it  
10 for the next year but not this '08-'09, because that  
11 concept paper for the three positions has been approved by  
12 the Resources agency authorizing us to prepare a full  
13 blown budget change proposal. So we will I think include  
14 those positions in the Fiscal Year '09 and '10.

15           And I doubt it if -- I will discuss it with DWR  
16 staff, but I doubt if we can modify at this stage of the  
17 game our budget change proposal for '08-'09.

18           SECRETARY DOHERTY: But if they haven't all been  
19 higher, surely some of those could be hydrologists.

20           GENERAL MANAGER PUNIA: That can be changed, the  
21 positions. We're asking two engineers, that they can be  
22 hydrologists or -- it's up to us. Those positions can be  
23 reclassified. When we request it's a general in any  
24 classification. Then it's up to us what type of  
25 subspecialization we want to hire.

1           BOARD MEMBER RIE: And, Jay, in addition to the  
2 ones that are already in the budget change paperwork -- I  
3 think that you said three?

4           GENERAL MANAGER PUNIA: Yes, correct, three.

5           BOARD MEMBER RIE: Okay. I think we should ask  
6 for three more. Even though we may not be able to get the  
7 paperwork approved, I would like you guys to send -- with  
8 you or Ben Carter to send a memo to the Finance Committee  
9 and tell them we want three more hydrologists or three  
10 more hydraulic engineers. And if they say no, they say  
11 no. Just tell them we want it.

12           GENERAL MANAGER PUNIA: Okay. That's a  
13 possibility. But the way the state system is set up, I  
14 think we have missed those dates for Fiscal Year '08-'09.  
15 We can do it for Fiscal Year '09 and '10.

16           PRESIDENT CARTER: Is there a way we can ask for  
17 some money to hire consultants then to backfill. They  
18 wouldn't be necessarily employees and they wouldn't be --  
19 but just an allowance for hiring consultants, get some  
20 money in the budget for that.

21           I think -- the concern I have is that we're  
22 setting ourselves up for failure if we do not staff up.

23           GENERAL MANAGER PUNIA: There is some money. I  
24 think Eric may have the detail on these type of services.

25           Eric, could you elaborate what type of money we

1 have in Fiscal Year '08-'09.

2 SENIOR ENGINEER BUTLER: Yeah, Eric Butler, Rec  
3 Board staff.

4 Without getting into the technical details of the  
5 budget the process, I think we may have some flexibility  
6 to direct a portion of the funds that we're requesting for  
7 '08-'09 towards contracts that could be used to hire  
8 consultants. And then beyond -- and during the same year,  
9 it may also be possible to request the Department to  
10 redirect either full people or partial years of new staff  
11 that are being hired to support the Board. There's many  
12 programs within Flood Management that have different  
13 levels of support to the Board currently. So, you know,  
14 Jay and Flood Management staff might possibly be able to  
15 come up with some agreements to borrow some people for the  
16 next couple years.

17 Beyond next year, '08-'09, we could go through  
18 the formal process of requesting new positions and then  
19 filling those positions.

20 But one thing to point out, that the position  
21 that we're requesting for '08-'09 are tied to the Prop 84  
22 bond funding. They're not generally funded positions.  
23 And my sense of the current picture is to try to get  
24 additional general funded positions is highly unlikely.  
25 And then of course the bond positions have a limited

1 lifetime on them. And right now the thought is that those  
2 positions would transfer to general fund, some other fund  
3 source or some other additional bonds down the road.

4 PRESIDENT CARTER: Okay.

5 BOARD MEMBER RIE: Well, I would be okay with --

6 SENIOR ENGINEER BUTLER: Yeah, we'll -- I think  
7 we have some ability to be creative in getting more staff  
8 support to the Board. Whether they're assigned full-time  
9 to the Board or whether they're, you know, DWR staff, that  
10 remains to be seen.

11 BOARD MEMBER RIE: I'm okay if we can borrow  
12 people.

13 PRESIDENT CARTER: Yeah, I think there needs to  
14 be a reasonable plan to essentially get the work done that  
15 we have, to get things off of our plate so that we can  
16 move on. Because right now we're slowly sinking.

17 So you guys need to really think hard about how  
18 you are going to accomplish what's ahead of you, with  
19 whatever resources you can muster. But what we have now  
20 is not enough, it's clear.

21 GENERAL MANAGER PUNIA: I'm hearing the Board's  
22 message very loud and clear, and I will do my best to  
23 bring additional resources.

24 A couple other items. Several Board members  
25 represented the Board at the U.S. Army Corps of Engineers

1 Change of Command ceremony. And I thank you.

2           And SAFCA's 408 approval letter has been issued  
3 from the U.S. Army Corps of Engineers. And we are still  
4 waiting for the TRLIA's 408 approval from the U.S. Army  
5 Corps of Engineers.

6           A Few conferences and symposiums. The American  
7 Society of Civil Engineers and the Society for American  
8 Military Engineer Conference is from July 24th to 26th.  
9 I'm sure most of the Board members are aware and planning  
10 to attend.

11           And on 27th of July we are having another  
12 conference sponsored by Rec Board and DWR, half a day  
13 conference, "How Safe is safe? What level of protection  
14 is Adequate for Urban Areas?"

15           And that also I think will be distributed to most  
16 of the Board members and that you have the appropriate  
17 information to participate in that conference.

18           And Floodplain Management Conference, September  
19 4th through 7th in South Lake Tahoe. We haven't decided  
20 if any staff will participate. But if anyone from the  
21 Board is interested, we'll be glad to provide you the  
22 adequate information.

23           Then Sacramento Area Flood Control-sponsored  
24 Vegetation Symposium is from August 28th to 29th. And  
25 some of the Board staff will participate. And if Board

1 members are interested, we will be glad to facilitate the  
2 distribution of that.

3 That's it. Thank you.

4 PRESIDENT CARTER: Any questions for Mr. Punia?

5 Mr. Bradley, did you have something you wanted to  
6 add?

7 CHIEF ENGINEER BRADLEY: No. Mr. Punia caught  
8 the vegetation conference.

9 PRESIDENT CARTER: Okay. I was surprised to hear  
10 that they were charging for that. So I'm interested to  
11 find out what their target audience was, because if  
12 they're looking for -- if they're looking for general  
13 participation, then charging for it is probably not the  
14 right way to go.

15 GENERAL MANAGER PUNIA: Maybe Tim Washburn can  
16 address that question.

17 MR. WASHBURN: Thank you. Tim Washburn, SAFCA.

18 Frankly, we're kind of overwhelmed by the level  
19 of interest. We've had to shift to the convention center,  
20 which can hold 500. And the suggestion has been a very  
21 strong one that we should provide lunch for people as part  
22 of the conference. And so in order to pay for the  
23 accommodations, provide a lunch and, you know, provide  
24 some coffee and, you know, what have you at breaks, this  
25 is a break-even proposition at this point at \$75 per

1 person per day.

2           Now, our target is, you know, mostly people who  
3 practice in this area. I mean the public is certainly  
4 welcome, but we're really aiming at those of us who are  
5 responsible for developing policy and implementing policy  
6 in this area.

7           But I mean the interest is just huge. And so,  
8 you know, it's mainly to support this much larger venue  
9 than we anticipated that we would need.

10           PRESIDENT CARTER: Yeah, I'm not -- it's just a  
11 very, very large and controversial issue. I'm not  
12 surprised at the level of interest. And I think if you're  
13 interested in practicing professionals, then that's  
14 probably okay, because they have expense accounts that  
15 they can write the expense off. But if you're looking for  
16 individuals, to charge is not the way to go.

17           MR. WASHBURN: I think that's right. I think we  
18 are looking more at folks who are in the policy and  
19 implementation arena. That was our focus when we began.  
20 And they're just -- that group is large.

21           PRESIDENT CARTER: Okay. Very good.

22           Any other questions for Mr. Punia?

23           BOARD MEMBER RIE: When is the vegetation  
24 conference?

25           GENERAL MANAGER PUNIA: August 28th and 29th. It

1 will be in Sacramento Convention Center.

2 PRESIDENT CARTER: Very good.

3 Moving on to Item 18, Future Agenda.

4 A. Direction to Staff Regarding Deadlines for  
5 Submittal of Information for Agenda Items Requiring Board  
6 Action.

7 Last month the Board discussed this also during  
8 our discussion on future agenda, and we indicated to staff  
9 that it was the Board's desire to have complete Board  
10 packets in the Board members' hands seven days prior to a  
11 Board meeting, and information for action items had to be  
12 included in that package. We were not going to be taking  
13 action on items where the information, staff reports,  
14 applicant formation was not complete and in the hands of  
15 the Board seven days prior to the Board meeting.

16 What we'd like to do at this meeting is formalize  
17 that direction from a Board perspective, and then also ask  
18 staff, given that in general when they're looking at  
19 action items, either requested actions or project studies  
20 or agreements, how much more lead time do they need prior  
21 to the Board meeting so that we can advise applicants that  
22 there is a deadline in terms of submitting complete  
23 information to the Board for consideration in a board  
24 meeting for action. I know I'd sent an E-mail suggesting  
25 30 days. But I did not hear a peep from staff on whether

1 that was good, bad, enough, too much.

2 CHIEF ENGINEER BRADLEY: In general, 30 days  
3 should be adequate for most things, if everything is  
4 complete.

5 In the past I mean if things weren't ready by the  
6 time the agenda went out, they really aren't ready. I  
7 mean everything should be -- the report ought to be done  
8 and all the staff reports ought to be done by that time in  
9 time to send out the agenda. If it's not ready, it really  
10 shouldn't be on the agenda because there's no way they're  
11 going to get ready between the time the agenda goes out  
12 and by the time the Board would get a package. So in  
13 general it needs to be done at that time.

14 You know, if somebody is preparing a staff report  
15 and submitting all the information for everything, 30 days  
16 is probably adequate depending on the issues to be  
17 covered. You know, large projects of course require --  
18 may require more time than some simple projects; or policy  
19 projects such as we've dealt with with River Islands. So  
20 those kind of things take some time. The applicant may  
21 submit something. But it really takes some thought to  
22 bring to the Board all the issues sometimes. An applicant  
23 really has one view and that's get the project done. But  
24 sometimes doing that causes problems other where -- or  
25 other places in the system for the Board and the staff.

1           SECRETARY DOHERTY: I want to make sure I  
2 understand.

3           So that everything is in your hands and reviewed  
4 30 days before our meeting or simply in your hands, you  
5 then review it, and we get it a week before the meeting?  
6 Which?

7           CHIEF ENGINEER BRADLEY: We would -- generally  
8 ask for it approximately about this time. If somebody  
9 hasn't really submitted something to us by this time for  
10 the August meeting, it's probably not going to make it  
11 just by the time it goes through all the reviews, there's  
12 got to be changes, it goes back to them, comes back to us.  
13 So what I'm saying is that everything ought to be ready at  
14 the time the final agenda goes out. If it's not ready, it  
15 shouldn't be on the agenda.

16          SECRETARY DOHERTY: Right.

17          CHIEF ENGINEER BRADLEY: That's really the cut  
18 point. So we're either ready at that time or we're not  
19 ready at that time.

20          PRESIDENT CARTER: Okay. So in general part of  
21 this discussion is to advise and put applicants on notice  
22 that the Board is going to be not as lenient as it has in  
23 the past with regard to submittals of information.

24          SECRETARY DOHERTY: They're re-doing the website.  
25 So this should be on the website.

1           STAFF ASSISTANT PENDLEBURY: I agree with you.

2 Just thinking the same direction.

3           SECRETARY DOHERTY: Yeah, notification's

4 necessary.

5           PRESIDENT CARTER: Okay. However, we need to

6 recognize that the staff needs some discretion. On larger

7 projects they will need more time. And so the applicant

8 is strongly advised to work with staff well in advance of

9 the Board meeting for action items.

10           But for now, in general the guideline is 30 days

11 minimum for normal items, and seven days in the hands of

12 the Board for action items.

13           Is that reasonable?

14           BOARD MEMBER BURROUGHS: Let's try it.

15           VICE-PRESIDENT HODGKINS: I think it is. I do

16 think for -- it would be helpful for me, Steve, if --

17 let's say an applicant gets you the package 30 days ahead.

18 How long does it take you to determine if it's complete?

19 Is a week a reasonable assumption?

20           CHIEF ENGINEER BRADLEY: Yeah, it probably --

21 depending on what we're talking about. You know, it may

22 just take, you know, a few hours to actually review it.

23 Now, it kind of depends on the schedule. How many

24 meetings have already been scheduled during that week? If

25 you're talking about only a week, sometimes there's a

1 whole bunch of meetings. I've been out of the office  
2 essentially all of this week. Very little bit of time in  
3 the office. So if somebody had submitted it expecting it  
4 to be done the following week, I'd probably be in trouble.

5           So if you have it 30 days ahead, there ought to  
6 be enough time to get a report reviewed. The real problem  
7 comes if it's not complete, you have to send it back. And  
8 then it will come in and it's still ahead of time. You  
9 may be able to put it in, but you may not.

10           VICE-PRESIDENT HODGKINS: Yeah. But I just think  
11 it would be -- I understand what you're say. There may be  
12 times when you don't get a chance to look and read. But I  
13 think generally the idea of letting the applicant know  
14 within a week of his submittal as to whether or not you  
15 think it is complete or not would be -- you know, this is  
16 a two-way street. Are they going to get it in earlier?  
17 But you guys got to take a look at it and let them know if  
18 it's not complete fairly quickly so we can try and keep  
19 things moving forward.

20           Is that fair?

21           CHIEF ENGINEER BRADLEY: I would agree with that.  
22 Thirty days ought to be sufficient for 99 percent of the  
23 cases. This week was an unusual week for me.

24           VICE-PRESIDENT HODGKINS: Good. Thank you.

25           BOARD MEMBER RIE: Steve, if you're on vacation

1 for like a week or two, are there other staff members who  
2 can look at the applications?

3 CHIEF ENGINEER BRADLEY: I would think so. Jay  
4 should be able to assign that to Dan or Eric. Jay's the  
5 ultimate authority as to whether something goes forward or  
6 not. He runs the Board staff.

7 BOARD MEMBER RIE: Okay.

8 PRESIDENT CARTER: Very good.

9 So we've got a meeting of the minds on this?

10 Good.

11 Okay. August 17th Board meeting that -- we've  
12 got a draft proposed agenda for August 17th. I think  
13 there was a question raised earlier today as to whether or  
14 not we were going to have an August meeting.

15 Is there still a question whether or not we're  
16 going to have an August meeting.

17 SECRETARY DOHERTY: I won't be here.

18 Is everybody else going to be here?

19 You're not going to be here?

20 VICE-PRESIDENT HODGKINS: No. Oh, I expect to be  
21 here.

22 PRESIDENT CARTER: I think we are planning on  
23 having an August 17th meeting, just in case there was any  
24 doubt.

25 So the front page is the normal items that we

1 review.

2           What I heard today was that under "Applications"  
3 Three Rivers was going to be bringing their encroachment  
4 permit for Feather River Segment 2. That's what they were  
5 proposing to do. That's potentially on the agenda for  
6 August 17th.

7           GENERAL MANAGER PUNIA: But based upon the  
8 guidelines we just discussed, I think it's almost  
9 impossible for them to be ready.

10           Dan can elaborate this more. He has the latest  
11 information.

12           BOARD MEMBER RIE: Were we planning on making  
13 these go into effect for August? Because I thought we  
14 were going to get some notification to the applicant  
15 before we start implementing strict guidelines.

16           BOARD MEMBER BURROUGHS: I think we've talked  
17 about it for several months. I've been anxious to get  
18 this implemented. So --

19           PRESIDENT CARTER: I think we gave preliminary  
20 notice last month. And it was on the agenda for this  
21 month. So I think we're going to go ahead and try and  
22 make it happen for August.

23           BOARD MEMBER RIE: Okay.

24           SUPERVISING ENGINEER FUA: Between now and August  
25 17th, that's our Board meeting next month, just about four

1 weeks to go, and we have not received any technical  
2 information from Three Rivers on the Segment 2. We didn't  
3 have any plan specifications. We didn't have the  
4 geotechnical report. We didn't have the foundation and  
5 embankment facility analysis and also the other  
6 engineering analysis that is required for us to review it.  
7 So I don't believe that staff can feel ready, you know --  
8 or can be ready to give to the Board members seven days  
9 before the Board meeting. That's August 10th. I don't  
10 believe we can provide to you the complete staff report  
11 for this encroachment permit application.

12           PRESIDENT CARTER: Okay. So we need to notify  
13 Three Rivers that they're going to be postponed until  
14 September.

15           CHIEF ENGINEER BRADLEY: They do understand that.  
16 Maybe even later, depending on when they get everything to  
17 us. But the regs require is we need complete plans and  
18 specifications. Now, some people take that to mean 100  
19 percent. My opinion of that is we need decent plans and  
20 specifications, probably at a minimum of about a 60  
21 percent design submittal, so that we know what they're  
22 doing. It can't be we've got this alternative or this  
23 alternative. You're making a decision not on alternatives  
24 but on an actual project. And we need to know what that  
25 is and have it well enough defined that I can make a

1 recommendation to you on the engineering end. And if you  
2 need legal advice, it's clear enough that Scott can  
3 provide that.

4           So I'm looking at most of the time 60 percent or  
5 somewhere about there would be sufficient. Sometimes  
6 you'll need 80, 90, 100 percent before you'd know what the  
7 project actually is. So that varies a little bit.

8           But they're not ready. They're not even going to  
9 have 30 done until I believe late August. So they're not  
10 ready to go.

11           SECRETARY DOHERTY: Now, we talked also about  
12 hydraulic analysis today and how it affects things  
13 downstream. So now are we going to require Three Rivers  
14 to do a hydraulic analysis?

15           SUPERVISING ENGINEER FUA: They have submitted an  
16 initial hydraulic analysis. And Steve and I reviewed it.  
17 And we have some comments on it, so they are going to redo  
18 that analysis.

19           CHIEF ENGINEER BRADLEY: Yeah, I met with Ric  
20 Reinhardt about a week and a half ago and went through the  
21 comments.

22           PRESIDENT CARTER: Okay. So we're not going to  
23 be reviewing Feather River Segment 2 encroachment.

24           Other than what's on the agenda, other things  
25 that I heard come up today was the hydraulic mitigation.

1 We wanted to continue that discussion. So we'll work --  
2 Butch and I will work with staff to see if we can craft  
3 something that the Board can consider for -- as a policy.  
4 So that ought to be put in the draft.

5 The Phelan levee. Mr. Heringer indicated that he  
6 wanted to be on the agenda for August. So that would need  
7 to be added as an informational briefing, I believe.

8 So that -- Mr. Punia, did you have something to  
9 add?

10 GENERAL MANAGER PUNIA: No, I think that's  
11 correct. We will add that.

12 PRESIDENT CARTER: Okay. Then the only other  
13 thing that I made notes on from today was the PAL  
14 agreement, whether or not -- how the Board felt about that  
15 and whether or not the Board wanted to hold a special  
16 meeting to make adjustments there.

17 What's the Board's pleasure on that?

18 BOARD MEMBER RIE: I think we ought to have a  
19 special meeting for -- we discussed it at this meeting. I  
20 think it's important. And I just don't see DWR certifying  
21 levees for the 100-year flood by August 24th.

22 SECRETARY DOHERTY: I agree. And I don't think  
23 it's written in stone that FEMA has to have that right  
24 now.

25 BOARD MEMBER RIE: Well, DWR -- Ricardo Pineda

1 put together a report and dropped it off after lunch. And  
2 in Ricardo's report it says that all the original FEMA  
3 letters went to the Reclamation Board. So I guess DWR  
4 decided to respond to FEMA on the Rec Board's behalf.

5 PRESIDENT CARTER: So this special meeting would  
6 be to discuss whether or not the Board wants to  
7 participate in and be the signatory on PAL agreements on  
8 behalf of the state. That's my understanding.

9 BOARD MEMBER RIE: Yes.

10 PRESIDENT CARTER: Okay. And do we want to have  
11 a special meeting then to discuss that? Teri has  
12 suggested, yes, we need to do that.

13 VICE-PRESIDENT HODGKINS: If we're only  
14 discussing whether we want to be signatory, I'm not sure  
15 that takes a special meeting. If the Board would consider  
16 trying to sign a PAL, so that this 24th deadline, or  
17 whatever it was, then that takes a special meeting. And  
18 I'm not sure what the interest is here of the other -- the  
19 rest of the Board.

20 BOARD MEMBER RIE: My interest is I'm concerned  
21 that the City of Stockton is going to get mapped into the  
22 floodplain because the State of California can't figure  
23 out who has the authority to sign what and nothing gets  
24 done.

25 VICE-PRESIDENT HODGKINS: Well, so that's -- I

1 think if you have a special meeting, it's really directed  
2 at the PAL agreement for San Joaquin County, City of  
3 Stockton.

4 BOARD MEMBER RIE: It will apply to all the PAL  
5 agreements that are out there.

6 VICE-PRESIDENT HODGKINS: Okay.

7 BOARD MEMBER BURROUGHS: Since Lady Bug cannot be  
8 here on the 17th, is there any, you know, merit to just  
9 having our one meeting and having it earlier in the month?  
10 Do we have enough time for that?

11 PRESIDENT CARTER: I hadn't considered that. It  
12 would put a real bind on our -- what we just discussed in  
13 terms of deadlines of information because we're shortening  
14 the time period for staff to be able to respond and get  
15 information and applicants to get information in.

16 BOARD MEMBER RIE: Well, that 30-day deadline is  
17 today. It's just -- today is 30 days prior to the next  
18 meeting.

19 PRESIDENT CARTER: Right.

20 BOARD MEMBER RIE: So we're already not going to  
21 make that except for Delta Levees Subventions, because  
22 that information is in this month's package.

23 PRESIDENT CARTER: Well, no, there are other  
24 things that have been submitted the Phelan levee has been  
25 submitted already. That information is in there. So I --

1           BOARD MEMBER BURROUGHS: It's just a thought.  
2 Since Three Rivers wasn't going to be ready anyway, since  
3 the rest of them are ready, then we could move it up a  
4 little bit earlier and just have one meeting. Just a  
5 thought.

6           BOARD MEMBER RIE: I'm okay with that.

7           PRESIDENT CARTER: Good.

8           GENERAL MANAGER PUNIA: Logistically we may not  
9 have the auditorium available. I think it adds -- we need  
10 to check whether we have the auditorium if we want to  
11 shift a date on short notice. The facility is sometimes  
12 not available if we want to move the meeting on a short  
13 notice.

14          PRESIDENT CARTER: Okay.

15          BOARD MEMBER BURROUGHS: We can check and see.

16          PRESIDENT CARTER: Right.

17          Do we have a proposed date for this special  
18 meeting or Board meeting?

19          BOARD MEMBER RIE: Lady Bug, when are you out of  
20 town?

21          SECRETARY DOHERTY: I'm leaving the second. And  
22 I won't be back until the 18th.

23          PRESIDENT CARTER: Well, then we're dead in the  
24 water anyway.

25          SECRETARY DOHERTY: Yeah, I just thought maybe

1 you just wanted to have a special meeting. I'm sorry.

2 PRESIDENT CARTER: That doesn't give us enough  
3 time to get notice out.

4 SECRETARY DOHERTY: Unless there's something  
5 that's necessary to be voted on, no.

6 GENERAL MANAGER PUNIA: I just want to make a  
7 comment.

8 The way this PAL agreement sign-up for DWR was  
9 coordinated with the FEMA and gearing up for signing the  
10 PAL agreement, if we change the direction at this stage,  
11 it can create some confusion. And the deadline is coming  
12 pretty quick.

13 BOARD MEMBER RIE: I think we already have  
14 confusion.

15 (Laughter.)

16 GENERAL MANAGER PUNIA: DWR is in touch with the  
17 FEMA. And from their perspective they were ready to  
18 review these PAL agreements and then decide whether they  
19 are going to sign it or not. I think we don't have the  
20 resources at our disposal for our staff to review all this  
21 information and to make a recommendation to the Board at  
22 this stage.

23 BOARD MEMBER BURROUGHS: Okay.

24 PRESIDENT CARTER: Yeah, with regard to the PAL  
25 and special meeting and whatnot, I do not like the way the

1 process was handled from last month through this month.  
2 Although, given the timing and whatnot, I don't know that  
3 there's a huge amount to be gained. I'm looking for  
4 something that indicates that there's a tremendous gain in  
5 having a special meeting and having us insert ourselves in  
6 that process. Gain from either the state's perspective or  
7 applicant's perspective. We may end up doing more damage  
8 than good if we get involved in that manner.

9           Maybe there's another way to be involved in that.  
10 I know, Butch, your meeting with some of the folks to try  
11 and understand their concerns next week. Perhaps there  
12 could be something perhaps the Board or Board staff or  
13 individual members of the Board, Board staff can try and  
14 facilitate the process and the public interest with DWR  
15 without having a special meeting or without the entire  
16 Board inserting itself in the process.

17           Is there a way to do that?

18           BOARD MEMBER RIE: How about if we send a letter  
19 to FEMA and tell FEMA that we support giving the  
20 reclamation districts, the counties or the cities or  
21 whoever the local agency is, we support giving them the  
22 time they need to gather their data to provide to FEMA  
23 such that they're not mapped into the floodplain. And  
24 that was the whole point of the PAL program to begin with.

25           PRESIDENT CARTER: I think that would be

1 reasonable if we were to know that the levees that are in  
2 question are in fact -- or have a potential of being  
3 certifiable. And I think with the one levee with regard  
4 to San Joaquin, there are some significant concerns as to  
5 whether or not the levee is certifiable. But I guess  
6 there's technical data that shows that they may not be.  
7 And so I'd hesitate -- and the purpose of PAL was not to  
8 do work, do construction, do fixes. It was to gather  
9 information, as has been indicated, not to do physical  
10 work to get the levee certified. It's to demonstrate and  
11 gather the information to say that they are certifiable.

12           So in the case of San Joaquin, there are some  
13 serious concerns technically as to whether or not the  
14 levee is in fact certifiable. And I hesitate to send a  
15 letter to FEMA without understanding those issues -- those  
16 technical issues completely.

17           BOARD MEMBER RIE: But I don't think we have to  
18 be specific for any particular reclamation district. I  
19 think we should be supportive of the process to gather the  
20 facts and have an opportunity to present them. I don't  
21 think we have to recommend that any levee be certified or  
22 not.

23           PRESIDENT CARTER: Okay. Well, I think there  
24 is -- I don't -- we are supportive of the process, I  
25 think. I'm not real comfortable with the way it was

1 handled. But in terms of allowing sufficient time for  
2 individuals to gather information to demonstrate that  
3 their levees are certifiable, I think we are and have been  
4 supportive of that. Do we need to reiterate that?

5 BOARD MEMBER RIE: I'm not sure if FEMA has the  
6 Rec Board's perspective on this matter.

7 GENERAL MANAGER PUNIA: This issue is beyond the  
8 Rec Board's jurisdiction, I think. Our charge is to  
9 develop flood control projects with the U.S. Army Corps of  
10 Engineers and then try to maintain the U.S. Army Corps of  
11 Engineers flood control project. This issue, whether  
12 they're going to be mapped into the FEMA map or not, I  
13 think is beyond The Reclamation Board jurisdiction. I  
14 think we are inserting ourselves into a new arena.

15 PRESIDENT CARTER: Where do we stand on this? Do  
16 we want to have a special meeting or do we want to send a  
17 letter?

18 SECRETARY DOHERTY: Well, I think you need some  
19 discussion on it. And I don't think the letter is going  
20 to hurt anything. He didn't give us a packet at noon  
21 time.

22 GENERAL MANAGER PUNIA: I think there is a --  
23 Lorraine distributed. Ricardo Pineda summarized where the  
24 DWR is. There's a copy. Each Board member should have  
25 it. It's called -- he wrote the -- from Ricardo Pineda

1 to -- it's addressed to me as General Manager. And it's a  
2 memorandum format. Looks like this.

3 SECRETARY DOHERTY: It came at noon time.

4 GENERAL MANAGER PUNIA: I think Lorraine had the  
5 copies -- Ricardo brought it. And she distributed to the  
6 Board members. That's what she told me.

7 VICE-PRESIDENT HODGKINS: Didn't we have a  
8 presentation at the previous Board meeting from Ricardo  
9 and FEMA on PAL? And --

10 SECRETARY DOHERTY: Got it. Found it.

11 -- some -- I mean the issues that are being  
12 raised now didn't really get raised at that meeting. And,  
13 you know, I don't know what the answer is. You know, I  
14 feel strongly that at some point there ought to be at  
15 least some kind of public hearing for folks that are going  
16 to get potentially thrown into a regulatory floodplain.  
17 And I don't know how many people there are in Stockton.  
18 But the flood insurance bills could be very high. That's  
19 okay if there really is a problem. And I think to RD 17  
20 maybe there is. On the other hand, in talking with these  
21 guys today, they're talking about another aspect of the  
22 flood control system down there, I think along the  
23 Stanislaus. Does that make any sense?

24 PRESIDENT CARTER: Calaveras.

25 VICE-PRESIDENT HODGKINS: Calaveras. The next

1 river down. And what they said to me was that's really  
2 the issue of where we -- it's flooding much at Stockton  
3 and causing the flood insurance requirement. That's why I  
4 want to meet with them. I want to better understand  
5 what's going on.

6           And if that's coming about because the Corps has  
7 gone through and done their O&M and said -- just done  
8 their inspection and then said, "Well, our inspection  
9 shows there are encroachments that are not up to snuff in  
10 some way," and therefore is giving the districts a year to  
11 fix that, and that position is in effect now going to  
12 throw a bunch of people into a 100-year regulatory  
13 floodplain and flood insurance requirements, and it really  
14 doesn't make any sense because it's a small little detail  
15 that could be taken care very quickly, then I would like  
16 to try and help them.

17           If on the other hand they -- you know, there's a  
18 real threat here to people in Stockton, then I think that  
19 my position at least as a Board member is we should not  
20 prevent them from ending up in a regulatory floodplain.  
21 Although it would have been nice if there had been public  
22 discussion of that one issue as part of the Board's  
23 process, so people would have had a chance to testify and  
24 could at least feel like they made their points. But  
25 these things happen.

1           And so I guess I don't -- I am happy to meet with  
2 these guys and see what I can find out and discern about,  
3 you know, is there something here where we ought to go and  
4 try and pull Ricardo and DWR and somebody that has -- and  
5 the Corps and FEMA in a room and say, "Look, you're  
6 mapping thousands of people into a flood insurance and it  
7 really doesn't make any sense. I feel worried about how  
8 you're going to look when Dan Walter writes a column about  
9 that." But if that's not the case, then I'd feel inclined  
10 to let it go. That's at least what I would do.

11           BOARD MEMBER BURROUGHS: I have mixed feelings,  
12 but we've stated this before. And, Butch, you said it  
13 here right now. But I would like our Rec Board to have a  
14 forum for a public hearing about this. And maybe that's  
15 what we can be is a facilitator for a public forum to  
16 discuss this. So that I do believe we do need more  
17 discussion.

18           We did have our, you know, attorney's  
19 recommendation. But at the same time I share the concerns  
20 that Teri has and I think that we all have, that we could  
21 be a facilitator for a public forum for a public hearing  
22 and invite all parties to come and discuss it, because it  
23 is a major impact.

24           PRESIDENT CARTER: Or perhaps SJAFCA can have  
25 kind of a public forum in Stockton saying, "Oh, by the

1 way, did you know that you are at risk of being mapped  
2 into a floodplain? And here's why." And --

3 SECRETARY DOHERTY: That would be good, I think.

4 GENERAL MANAGER PUNIA: Maybe I -- I have a  
5 suggestion that's based on Board Member Rose Marie, that  
6 public forum -- that maybe on the August 17th meeting we  
7 invite DWR to share with the Board what their position is  
8 on these PAL agreements so they can brief the Board  
9 whether they are going to sign on this specific PAL  
10 agreement or not. And then still they have a week. And  
11 then Board can provide their input on those special PAL  
12 agreements to the DWR. And they will present that based  
13 upon what ground they would sign it or deny those PAL  
14 agreements.

15 BOARD MEMBER RIE: That sounds like a good idea.

16 I wanted to point out something. I don't know if  
17 you guys had a chance to look at Ricardo's memo. But in  
18 the third paragraph, because FEMA had sent the letter to  
19 the Reclamation Board, Ricardo suggests that we ought to  
20 respond to FEMA and tell FEMA that DWR will work with the  
21 Corps and the local maintenance agency to address these  
22 deficiencies and then evaluate signing the PALs. I don't  
23 agree with that. I think what we ought to tell DWR is  
24 because of the public interest and the PAL process, the  
25 Rec Board members want to be involved and we want to be

1 briefed.

2           PRESIDENT CARTER: Okay. So then for August 17  
3 we will have a specific informational briefing on DWR's  
4 position on -- their current position on PAL agreements  
5 that they have before them. And we'll open that up to  
6 public comment.

7           BOARD MEMBER RIE: Do we want to make that an  
8 action item just in case we want to give DWR some  
9 direction?

10          PRESIDENT CARTER: Do we need -- Does it need to  
11 be an action item to give DWR direction?

12          STAFF COUNSEL MORGAN: What would you direct them  
13 to do?

14          BOARD MEMBER RIE: Sign the PALs.

15          STAFF COUNSEL MORGAN: Hmm?

16          BOARD MEMBER RIE: Sign the PALs.

17          STAFF COUNSEL MORGAN: They're not going to sign  
18 the PAL under your direction. They don't work for the  
19 Board. I know they think the Board works for them. But  
20 then I'm always telling them that's not true either.

21                 I mean they're an independent state agency, and  
22 they've taken on this role. But this is FEMA's gig. This  
23 is not the Department's gig, it's not the Board's gig.  
24 And the entity that should be having public hearing on  
25 this is FEMA, frankly.

1           GENERAL MANAGER PUNIA:  They added public  
2 hearings in each respective county where they're trying  
3 to --

4           STAFF COUNSEL MORGAN:  So they've done --

5           GENERAL MANAGER PUNIA:  There was in Stockton a  
6 public hearing.

7           SECRETARY DOHERTY:  There was one in Colusa too,  
8 but it certainly wasn't advertised very well.

9           BOARD MEMBER RIE:  And one in Contra Costa  
10 County, but it wasn't --

11          SECRETARY DOHERTY:  I was called and told to go.

12          BOARD MEMBER RIE:  -- it wasn't publicly  
13 advertised.  It was by invitation only.

14          SECRETARY DOHERTY:  Right.

15          STAFF COUNSEL MORGAN:  Well, the feds have their  
16 own way of doing things.

17          PRESIDENT CARTER:  Okay.  So we will ask DWR to  
18 come and talk to us about their position on the PAL  
19 agreements in August.

20          BOARD MEMBER BURROUGHS:  And why not have -- you  
21 know, have the other agency come as well.

22          PRESIDENT CARTER:  FEMA.

23          BOARD MEMBER BURROUGHS:  Yeah, have FEMA come.

24          GENERAL MANAGER PUNIA:  We can invite FEMA too.  
25 But we can't guarantee whether FEMA will be here or not.

1 But DWR we have a relationship, so we'll make sure that  
2 they are here.

3 PRESIDENT CARTER: Very good.

4 Are there any other items that Board members wish  
5 to have or staff wish to have on the agenda for August?

6 GENERAL MANAGER PUNIA: Tim Washburn in his  
7 briefing said that he's expecting a project -- an  
8 informational briefing on SAFCA project in August. I just  
9 want to make it clear on the --

10 MR. WASHBURN: I think it would be -- if you're  
11 meeting in September, I think it would be better for  
12 September.

13 GENERAL MANAGER PUNIA: September.

14 PRESIDENT CARTER: Okay. Nothing else?

15 Okay. So we will work with those items for our  
16 draft for August 17.

17 No further business.

18 We are adjourned.

19 Thank you very much. Thanks for your patience.

20 (Thereupon the Reclamation Board open  
21 session meeting adjourned at 6:09 p.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing Reclamation Board open session meeting was  
7 reported in shorthand by me, James F. Peters, a Certified  
8 Shorthand Reporter of the State of California, and  
9 thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in any  
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 7th day of August, 2007.

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